



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SETTLEMENT CONFIDENTIAL

JUL 2 2013

UNITED PARCEL SERVICE

Mr. John A. Brunini, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201

SUBJECT: Peco Foods, Inc., Bay Springs, Mississippi Facility
Consent Agreement and Final Order

Dear Mr. Brunini:

Per your request, enclosed please find a second copy of the Consent Agreement and Final Order (CAFO) for the Peco Foods, Inc., Bay Springs, Mississippi facility. Please have your clients sign it at their earliest convenience and in no event later than 14 days of your receipt of the CAFO and send the original back to us at the following address:

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

If you have any questions or concerns, please let either Karl or I know. Karl can be reached at either 404-562-9295 or wilson.karl@epa.gov. I can be reached at either 404-562-9524 or crum.lynda@epa.gov.

Sincerely yours,

Lynda C. Crum
Attorney Advisor

Attachment

cc: Karl Wilson, U.S. EPA, Region 4

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Peco Foods, Inc.

Respondent.

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Docket Number: EPCRA-04-2013- 2023(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Peco Foods, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004 and July 8, 2010; and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Peco Foods, Inc., is a corporation doing business in the State of Mississippi.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 95 Commerce Drive, Bay Springs, Mississippi 39422.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (RQ).

11. Respondent was in charge of the facility on May 11, 2012.

12. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

13. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violation of Section 304(a) of EPCRA

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

17. Respondent was the owner or operator of the facility on May 11, 2012.

18. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as described in Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

19. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

20. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

21. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

IV. Consent Agreement

29. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

30. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

31. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

32. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

33. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

34. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

35. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

V. Final Order

36. Respondent shall pay a civil penalty of SEVEN HUNDRED FORTY NINE DOLLARS (\$749) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

37. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental
Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
U.S. Government Lockbox 979076
EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

38. Respondent shall pay a civil penalty of ONE THOUSAND FOUR HUNDRED NINETY SIX DOLLARS (\$1,496) for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

39. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

40. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Karl Wilson
U.S.EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

41. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

42. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Cash donations shall not be used to satisfy the terms and conditions of this CAFO. Peco Foods, Inc., shall expend not less than EIGHT THOUSAND DOLLARS (\$8,000) to purchase the following for the Bay Springs Fire Department:

- 2 Self-Contained Breathing Apparatuses, Z7-3-03-02-00-02-B,
2215 LO Kevlar Harness, LP 30 Carbon, Medium Air Switch Device, Voice
Amplification System, Pass Buddy Breather

This CAFO shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

43. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

44. Respondent has obtained and presented to EPA a separate written certification from the recipient of the SEP, the Bay Springs Fire Department, that it is not a party to any open federal financial assistance transaction as stated in Paragraph 43.

45. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

46. No later than seventy five (75) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Karl Wilson at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of EIGHT THOUSAND DOLLARS (\$8,000), or greater, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 42.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

47. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

48. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act."

49. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 42. If Respondent fails to timely and fully complete any part of the Emergency Planning and Preparedness SEP in Paragraph 42, including failure to spend the minimum amount of EIGHT THOUSAND DOLLARS (\$8,000), Respondent shall be liable for a stipulated penalty in the amount of the difference between \$8,000 and the actual amount spent. For purposes of this paragraph, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

50. For purposes of Paragraph 49, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

51. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

52. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

53. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

55. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

56. This CAFO shall be binding upon the Respondent, its successors, and assigns.

57. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

58. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VI. Effective Date

59. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Peco Foods, Inc.:

By: _____ Date: _____
Name: _____ (Typed or Printed)
Title: _____ (Typed or Printed)

U.S. Environmental Protection Agency:

By: _____ Date: _____
Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this _____ day of _____, 2013.

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing

Consent Agreement and Final Order, In the Matter of Peco Foods, Inc., Docket Number:

EPCRA-04-2013-2023(b), on the parties listed below in the manner indicated:

Caron Falconer (Via EPA Internal Mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Lynda Crum (Via EPA Internal Mail)
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA Internal Mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

John Brunini (Via Certified Mail – Return Receipt Requested)
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, MS 39201

Date: _____

Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection
Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN -5 2013

UNITED PARCEL POST

John A. Brunini, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building
190 East Capitol St, Suite 100
Jackson, Mississippi 39201

RE: Peco Foods, Inc., Bay Springs, Mississippi
Consent Agreement and Final Order

Dear Mr. Brunini:

Attached per our email discussion earlier today is a copy of a revised version of the Consent Agreement and Final Order (CAFO). This version does not contain Paragraphs 22 through 28 of the former CAFO, which discussed Section 304(c) of the Emergency Planning and Community Right-to-Know Act.

Please feel free to contact me if you have questions. I can be reached either by phone at 404-562-9524 or by email at crum.lynda@epa.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lynda C. Crum".

Lynda C. Crum
Attorney Advisor

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Peco Foods, Inc.

Respondent.

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) Docket Number: EPCRA-04-2013- 2023(b)
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CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

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2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004 and July 8, 2010; and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Peco Foods, Inc., is a corporation doing business in the State of Mississippi.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 95 Commerce Drive, Bay Springs, Mississippi 39422.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (RQ).

11. Respondent was in charge of the facility on May 11, 2012.

12. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

13. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violation of Section 304(a) of EPCRA

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

17. Respondent was the owner or operator of the facility on May 11, 2012.

18. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as described in Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

19. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

20. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

21. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

IV. Consent Agreement

29. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

30. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

31. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

32. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

33. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

34. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

35. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

V. Final Order

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37. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

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U.S. Environmental
Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
U.S. Government Lockbox 979076
EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
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The check shall reference on its face the name and the Docket Number of the CAFO.

38. Respondent shall pay a civil penalty of ONE THOUSAND FOUR HUNDRED NINETY SIX DOLLARS (\$1,496) for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

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Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

40. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

41. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

42. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Cash donations shall not be used to satisfy the terms and conditions of this CAFO. Peco Foods, Inc., shall expend not less than EIGHT THOUSAND DOLLARS (\$8,000) to purchase the following for the Bay Springs Fire Department:

- 2 Self-Contained Breathing Apparatuses, Z7-3-03-02-00-02-B,
2215 LO Kevlar Harness, LP 30 Carbon, Medium Air Switch Device, Voice
Amplification System, Pass Buddy Breather

This CAFO shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

43. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

44. Respondent has obtained and presented to EPA a separate written certification from the recipient of the SEP, the Bay Springs Fire Department, that it is not a party to any open federal financial assistance transaction as stated in Paragraph 43.

45. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

46. No later than seventy five (75) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Karl Wilson at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of EIGHT THOUSAND DOLLARS (\$8,000), or greater, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 42.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

47. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

48. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act."

49. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 42. If Respondent fails to timely and fully complete any part of the Emergency Planning and Preparedness SEP in Paragraph 42, including failure to spend the minimum amount of EIGHT THOUSAND DOLLARS (\$8,000), Respondent shall be liable for a stipulated penalty in the amount of the difference between \$8,000 and the actual amount spent. For purposes of this paragraph, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

50. For purposes of Paragraph 49, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

51. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

52. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

53. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

55. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

56. This CAFO shall be binding upon the Respondent, its successors, and assigns.

57. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

58. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VI. Effective Date

59. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Peco Foods, Inc.:

By: _____ Date: _____
Name: _____ (Typed or Printed)
Title: _____ (Typed or Printed)

U.S. Environmental Protection Agency:

By: _____ Date: _____
Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this _____ day of _____, 2013.

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, In the Matter of Peco Foods, Inc., Docket Number:
EPCRA-04-2013-2023(b), on the parties listed below in the manner indicated:

Caron Falconer (Via EPA Internal Mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Lynda Crum (Via EPA Internal Mail)
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA Internal Mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

John Brunini (Via Certified Mail – Return Receipt Requested)
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, MS 39201

Date: _____

Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection
Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511



Proof of Delivery

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Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number:	1ZWR25742310023345
Service:	UPS Next Day Air Saver®
Shipped/Billed On:	06/12/2013
Delivered On:	06/12/2013 2:40 P.M.
Delivered To:	JACKSON, MS, US
Left At:	Front Door

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 06/20/2013 8:29 A.M. ET

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Tracking Detail

1ZWR25742310023345

Delivered

Delivered On:

Wednesday, 06/12/2013 at 2:40 P.M.

[Request Status Updates »](#)

Left At:

Front Door

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Shipped/Billed On:

06/12/2013

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MJD

Crum, Lynda

From: Crum, Lynda
Sent: Thursday, March 14, 2013 6:28 AM
To: Spagg, Beverly; Falconer, Caron; Rubini, Suzanne
Cc: Wilson, Karl
Subject: FW: SEP Proposal - Peco Foods, Inc. Bay Springs, Mississippi Matter
Attachments: Letter to Lynda Crum.pdf

FYI. In addition, fyi, Peco intends to send their SEP proposal for the AL facility today sometime. (I will forward it to you when I receive it). -lc

Lynda Crum
Attorney-Advisor
US EPA, Region 4
404-562-9524

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From: John Brunini [<mailto:jbrunini@brunini.com>]
Sent: Wednesday, March 13, 2013 4:29 PM
To: Crum, Lynda
Cc: Wilson, Karl; Bookman, Robert; 'Ronnie Tolbert' (rtolbert@pecofoods.com); sconley@pecofoods.com; Steve Carmody
Subject: SEP Proposal - Peco Foods, Inc. Bay Springs, Mississippi Matter

Lynda,

Attached to this email, please find a letter addressed to you containing a SEP proposal by Peco Foods, Inc. to offset a portion of the agreed penalty amount for its Bay Springs, Mississippi ammonia release incident. Once you have had an opportunity to review the letter, please let me know if you have any questions or concerns regarding it. We look forward to working with EPA to finalize the settlement in this matter.

Thanks,
JB

John A. Brunini
E: jbrunini@brunini.com
P: 601-973-8712 F: 601-960-6902

BRUNINI

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

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1431 October 2001 Notice

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Crum, Lynda

From: John Brunini [jbrunini@brunini.com]
Sent: Wednesday, March 13, 2013 4:29 PM
To: Crum, Lynda
Cc: Wilson, Karl; Bookman, Robert; 'Ronnie Tolbert' (rtolbert@pecofoods.com); sconley@pecofoods.com; Steve Carmody
Subject: SEP Proposal - Peco Foods, Inc. Bay Springs, Mississippi Matter
Attachments: Letter to Lynda Crum.pdf

Lynda,

Attached to this email, please find a letter addressed to you containing a SEP proposal by Peco Foods, Inc. to offset a portion of the agreed penalty amount for its Bay Springs, Mississippi ammonia release incident. Once you have had an opportunity to review the letter, please let me know if you have any questions or concerns regarding it. We look forward to working with EPA to finalize the settlement in this matter.

Thanks,
JB

John A. Brunini

E: jbrunini@brunini.com
P: 601-973-8712 F: 601-960-6902



The Pinnacle Building
190 East Capitol St, Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

www.brunini.com
[Bio / V-Card](#)

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Crum, Lynda

From: Crum, Lynda
Sent: Thursday, March 14, 2013 6:43 AM
To: John Brunini
Subject: RE: Peco Foods, Inc.

John, thank you for the proposal and heads up. Thanks to you also for your help in these matters. -Lynda

Lynda C. Crum
Attorney-Advisor
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
404-562-9524
crum.lynda@epa.gov

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From: John Brunini [<mailto:jbrunini@brunini.com>]
Sent: Wednesday, March 13, 2013 4:31 PM
To: Crum, Lynda
Subject: Peco Foods, Inc.

Lynda,

I just emailed you a SEP proposal in the Peco Foods - Bay Springs, Mississippi ammonia release matter. I have another SEP proposal prepared and ready to send to you on the Tuscaloosa, Alabama matter. I am waiting on client approval of it and should be able to send it either later this afternoon or early tomorrow. Just an FYI. Thanks for all of your help in these matters.

Thanks,
JB

John A. Brunini
E: jbrunini@brunini.com
P: 601-973-8712 F: 601-960-6902

BRUNINI

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building
190 East Capitol St. Suite 100, Jackson, MS 39201
Post Office Drawer 119, Jackson, MS 39205

comprehension of the text. The authors also found that the use of the text in the classroom was not always as intended. The authors also found that the use of the text in the classroom was not always as intended. The authors also found that the use of the text in the classroom was not always as intended.

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BRUNINI

ATTORNEYS AT LAW

John A. Brunini

E-mail: jbrunini@brunini.com
Direct: 601.973.8712

The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201
Telephone: 601.948.3101

Post Office Drawer 119
Jackson, Mississippi 39205
Facsimile: 601.960.6902

March 13, 2013

Lynda C. Crum, Esq.
Associate Regional Counsel
United States Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960

RE: Proposed Supplemental Environmental Project for Alleged Violations at Peco
Foods Inc. Bay Springs, Mississippi Facility

Dear Ms. Crum:

In February, we agreed to the terms of a proposed settlement to resolve alleged EPCRA and CERCLA violations involving an ammonia release event that occurred at Peco Foods Inc.'s ("Peco") Bay Springs, Mississippi facility on May 11, 2012. According to our agreement, Peco has agreed to a proposed penalty of \$8,645. In order to offset a portion of the cash penalty to be paid in this matter, Peco wishes to perform a Supplemental Environmental Project ("SEP"). The purpose of this letter is to provide you with details of the proposed SEP and request EPA approval of it.

The May 11, 2012 ammonia release incident involves alleged violations of EPCRA and CERCLA. Fortunately, the release did not involve any harm to human health or the environment. However, local first responders were notified of the incident and appeared on site to provide any necessary assistance in dealing with the release incident. To offset a portion of the cash penalty in this matter, Peco is proposing an Emergency Planning and Preparedness SEP that includes the purchase of equipment needed by the Bay Springs Fire Department ("BSFD") in its efforts to respond to emergency situations. Peco representatives have communicated with Mr. Tommy Boyd, Chief of the BSFD regarding equipment needs it has for responding to emergency situations. Boyd prepared a list of needed equipment and obtained price quotes from vendors for the needed equipment. Boyd's list of needed equipment includes two self-contained underwater breathing apparatus devices, complete with tanks, masks, harnesses, and radio communication devices.

Attached as Exhibit "A" to this correspondence, please find documentation provided by

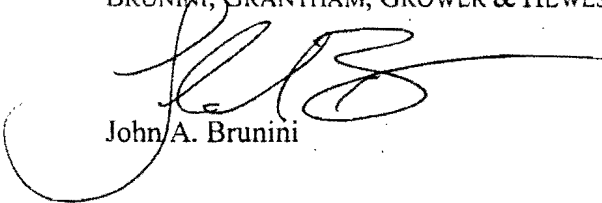
Boyd of the cost of the equipment needed by BSFD in the form of a price quote for the equipment from A1 Fire Equipment, Inc. The total cost quoted for the equipment needed by BSFD is \$8,000.00. This proposed purchase of equipment for BSFD qualifies as an Emergency Planning and Preparedness SEP, which are regularly approved for EPCRA violations. There is a significant nexus between this proposed SEP and Peco's alleged violations. BSFD would be the first responders to any fire or other release incident at Peco's Bay Springs, Mississippi facility. As collective Exhibit "B" to this correspondence, please find copies of the required Certifications from Peco and BSFD regarding funding for the purchase of equipment for this proposed SEP. If EPA approves this SEP, we can provide originals of these certifications for inclusion with the consent agreement and final order.

Peco request that EPA approve the proposed SEP involving the acquisition of this equipment for BSFD. If approved, Peco would spend \$8,000.00 on this SEP and receive credit for 80% of this expense (or \$6,400.00) toward its penalty obligation. Peco is proposing to pay the balance of \$2,245.00 as a cash payment, satisfying EPA's SEP Policy requirement that at least 25% of the overall penalty amount be paid in cash.

Once you have had an opportunity to consider this proposed SEP, please contact me with any questions or concerns you may have regarding it.

Sincerely yours,

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC



John A. Brunini

Enclosures

cc: Karl Wilson
Robert Bookman
Stephen Johnston
Steve Conley



A1 FIRE EQUIPMENT, Inc.

18 Three Pines Rd.
Laurel, MS 39443

Estimate

Date	Estimate #
2/25/2013	584

Name / Address
BAY SPRINGS FIRE TOMMY BOYD P.O. BOX 745 BAY SPRINGS, MS 39422

				Project
Description	Qty	U/M	Rate	Total
77-3-03-02-00-02-B 221 FLO KELVLAR HARNESS, LP 30 CARBON, MEDIUM AIR SWITCH DEV, VOICE AMPLIFICATION SYSTEM/ PASS BUDDY BREATH	2	ea	4,000.00	8,000.00
Total				\$8,000.00

Phone #	Fax #	E-mail	Web Site
601-433-6803	601-425-1849	aoncfireequipment@yahoo.com	a1-fireequipment.com

EXHIBIT

A

Certification of Peco Foods, Inc.

Peco Foods, Inc. ("Respondent") certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the Supplemental Environmental Project ("SEP") it is proposing. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired."

Peco Foods, Inc.

Signed:

Ronnie Tolbert

Printed Name:

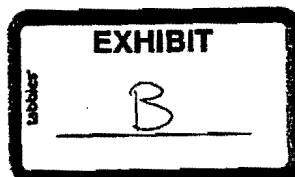
Ronnie Tolbert

Title:

Plant Manager

Date:

3-7-2013



Certification of Bay Springs, Mississippi Fire Department

Bay Springs, Mississippi Fire Department ("Recipient") certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the Supplemental Environmental Project ("SEP") proposed by Peco Foods, Inc. Recipient further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the Environmental Protection Agency within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

Bay Springs, Mississippi Fire Department

Signed:

Thomas S. Boyd

Printed Name:

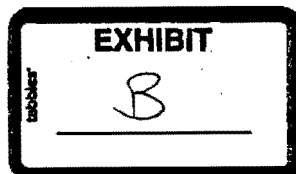
Thomas S. Boyd

Title:

Chief

Date:

3-7-2013





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 14 2013

UNITED PARCEL SERVICE

Mr. John Brunini
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201

Re: Peco Foods, Inc., Bay Springs, MS
Consent Agreement and Final Order
Docket Number: EPCRA-04-2013-2023(b)

Dear Mr. Brunini:

Enclosed please find the Consent Agreement and Final Order (CAFO) resulting from settlement discussions with your client, Peco Foods, Inc., Bay Springs, Mississippi, regarding its alleged violations of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603 and Section 304(a) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11004.


Please have the original CAFO signed (printed or electronic copies are not acceptable) where indicated and return it within 10 calendar days of receipt of this letter to:

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Upon receipt of the signed CAFO, the document will be forwarded to the Air, Pesticides & Toxics Management Division director for signature, the Regional Judicial Officer for approval, and then filed with the Regional Hearing Clerk. A copy of the filed document will be forwarded to you.

If you have any questions, please contact Ms. Lynda Crum at (404) 562-9524.

Sincerely,


Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Peco Foods, Inc.

Respondent.

)
)
)
)
)
)

Docket Number: EPCRA-04-2013- 2023(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Peco Foods, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004 and July 8, 2010; and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Peco Foods, Inc., is a corporation doing business in the State of Mississippi.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 95 Commerce Drive, Bay Springs, Mississippi 39422.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

9. Respondent is the person in charge of the facility as that term is found at 40 C.F.R. § 302.6(a).

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

11. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (RQ).

12. Respondent was in charge of the facility on May 11, 2012.

13. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

14. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

15. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in

an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

16. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violations of Section 304(a) of EPCRA

17. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

18. Respondent was the owner or operator of the facility on May 11, 2012.

19. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as described in Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

20. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A and B.

21. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility. EPA alleges that the release was not limited to exposure to persons solely within the site on which the facility is located.

22. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the applicable EPCRA regulations of 40 C.F.R. § 355, Subpart C, by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

23. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) that occurred after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

25. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

26. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

28. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

V. Final Order

30. Respondent shall pay a civil penalty of TWO THOUSAND EIGHT HUNDRED SIXTY DOLLARS (\$2,860) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

31. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental
Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
U.S. Government Lockbox 979076
EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

32. Respondent shall pay a civil penalty of FIVE THOUSAND SEVEN HUNDRED EIGHTY FIVE DOLLARS (\$5,785) for the EPCRA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

33. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

34. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

35. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

36. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a

delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

38. This CAFO shall be binding upon the Respondent, its successors and assigns.

39. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VI. Effective Date

41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Peco Foods, Inc.:

By: _____ Date: _____

Name: _____ (Typed or Printed)

Title: _____ (Typed or Printed)

U.S. Environmental Protection Agency:

By: _____ Date: _____

Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this _____ day of _____, 2013.

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, In the Matter of Peco Foods, Inc., Docket Number:
EPCRA-04-2013-2023(b), on the parties listed below in the manner indicated:

Caron Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA Internal Mail)

Lynda Crum
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA Internal Mail)

Robert Caplan
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA Internal Mail)

John Brunini
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, MS 39201

(Via Certified Mail – Return
Receipt Requested)

Date: _____

Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection
Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

BRUNINI

ATTORNEYS AT LAW

John A. Brunini

E-mail: jbrunini@brunini.com
Direct: 601.973.8712

The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201
Telephone: 601.948.3101

Post Office Drawer 119
Jackson, Mississippi 39205
Facsimile: 601.960.6902

October 3, 2012

Mr. Robert Bookman
Mr. Karl D. Wilson
EPCRA Enforcement Division
Air, Pesticides & Toxics Management Division
United States Environmental Protection Agency Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303

Lynda C. Crum
Associate Regional Counsel
US Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

RE: Peco Foods, Inc., Bay Springs, Mississippi Facility
Response to EPA's August 20, 2012 Settlement Correspondence

Dear Mr. Bookman, Mr. Wilson, and Ms. Crum,

Enclosed please find the final report of FC&E Engineering, Inc. on the Peco Foods, Inc. Bay Springs, Mississippi ammonia release incident. I apologize for the delay in providing this report to you. I had hoped to email it to each of you, but the color photographs attached as exhibits rendered the electronic file size too large for easy distribution. Once you have had an opportunity to review the final report, please contact me if you have any questions.

Sincerely yours,

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC



John A. Brunini

Enclosures

P.O. BOX 1774
BRANDON, MS 39013
(601) 824-1860

FC&E ENGINEERING, LLC
Engineered Solutions to Environmental Challenges
www.fce-engineering.com

BRANDON
STARKVILLE
VICKSBURG

September 28, 2012

Mr. John A. Brunini
Brunini, Grantham, Grower & Hewes PLLC
The Pinnacle Building
190 East Capital Street, Suite 100
Jackson, Mississippi 39201

Re: Peco Foods - Bay Springs, Mississippi
Ammonia Release 5/11/12

Dear Mr Brunini,

At your request, FC&E Engineering LLC has investigated facts surrounding the referenced event to determine the amount of ammonia released. FC&E's report on this investigation is contained in this letter.

INTRODUCTION

On the evening of Friday, May 11, 2012, an incident occurred at the Peco Foods plant in Bay Springs, Mississippi, which resulted in the release (as defined under 40 CFR Part 302) of ammonia.

On the evening of May 11, 2012, the blades on an evaporator coil fan in the #1 blast freezer at the Peco Foods facility broke loose from the spinning hub (see Figures 2 & 3). One of the pieces pierced the evaporator coil (see Fig 1), allowing ammonia to leak from the refrigeration system into the blast freezer. The released ammonia was mostly contained in the blast freezer, though some leaked out under the blast freezer doors and through a few very small cracks and joints in the freezer. A few hours after the ammonia leak was discovered, a hole was cut in an exterior wall of the blast freezer (see Fig 6) to allow ammonia vapors to be drawn from the cell in a controlled fashion. A small electric fan was placed immediately outside the hole so as to draw ammonia vapor trapped in the blast freezer to exterior air outside the Peco building (see Fig 7). Peco employees arranged a water spray on the discharge side of the fan (see Fig 7 & 11). This arrangement proved very effective in absorbing ammonia vapors. The situation was safely resolved with no injury to human health. The only environmental consequences noticed was some dead grass in the bottom of the ditch where the water from the water spray accumulated (see Fig 8). This effect was noted onsite only, and no effects from the incident were evident beyond the Peco property line (see Fig 9).

Releases of ammonia to the environment of over 100 pounds must be promptly reported to federal, state and local agencies to facilitate assistance with protective actions. However, any leaked ammonia that is somehow captured or contained

before it reaches the property boundary has not been "released to the environment" under Part 302. Sometimes, events occur in such a way that quantification of released ammonia, that is, ammonia that escaped the site boundary, is difficult. This Peco-Bay Springs event is an example of such a difficult quantification.

Based on the findings of this investigation, Peco made proper and timely notifications when the release was discovered. It made the notifications without certainty that a reportable quantity (RQ) of ammonia (over 100 pounds) had been released as a result of the event, but out of an abundance of caution and deference to the regulatory requirement.

TIMELINE

FC&E has reconstructed the facts of the event, to the best of its ability, using recorded plant operating data, eyewitness descriptions and a site visit on 5/22/12. It is important to point out that plant data is typically not continuously monitored and reviewed in real time. All plant operating data discussed here is from a "data capture" system, not a continuously monitored control room with alarms and interlocks.

Data for the Peco Bay Springs ammonia refrigeration system (Figs 13 – 15) show that at about 9:55 PM, the discharge pressure in the ammonia refrigeration system began rising. By approximately 10:00 PM, the discharge pressure rose above the highest discharge pressure that had occurred in the system over the preceding several hours (approximately 191 psig), beyond what might be considered natural system variability. By approximately 10:10 PM, the discharge pressure exceeded 200 psig, and by about 10:25 PM, the high stage compressor was automatically shut down, because the set-point maximum discharge pressure of 213 psig was reached. Before this time, there was no indication of any sort that a problem existed in the system, other than on an unmonitored data collection system.

At around 11:00 PM, an employee working in the blast unloading area, a common area where all six blast freezer cells are unloaded, smelled ammonia. At this time, the source of the odor was not apparent. The onsite shift manager was promptly notified and began checking for the source of the odor. The shift manager, checking around the outside of the facility, noticed a faint ammonia odor near the exterior wall of the blast freezers. The onsite maintenance manager was notified of the situation around 11:10 PM.

The Refrigeration Superintendent, Kevin Smith, who was at home at the time, was notified at 11:17 PM.

At 11:30 PM, all production employees were evacuated from the building, and ventilation was begun to remove the ammonia odor from work areas. Also at this time, the shift refrigeration manager and the shift maintenance manager jointly

began searching for the source of the odor. Offsite plant management was notified at 11:45 PM of the evacuation.

At 11:52 PM, Kevin Smith, the plant Refrigeration Superintendant arrived onsite. At about the same time, the ammonia compressor was turned back on to help determine the source of the leak. Full vacuum was restored in minutes. He quickly began checking for leak sources in the blast freezers, in order from #2-#6. Without any specific information, he initially suspected either Cell #2 or Cell #5, both of which were on hot gas defrost cycle at the time. This is a part of the refrigeration cycle where hotter ammonia is circulated to cause any frost build up on the evaporator coils to melt and drip from coils to improve heat transfer efficiency.

Boxes of chicken were initially blocking the door of #1 and had to be moved by forklift before the #1 blast freezer could be checked. Mr. Smith opened the door of #1 at 12:30 AM, and immediately determined it to be the source of the odor. He immediately closed the door, and employees began placing wet rags and towels around the door edges to intercept any leakage from the cell.

The evaporator coils in the #1 blast freezer were isolated by valving at 12:35 AM, 5/12/12, so no more ammonia could be fed to the damaged evaporator coil.

Ammonia concentrations in the plant were measured by a handheld ammonia sensor at 12:20 am, and for a period of time thereafter. To get an approximation of how much ammonia these readings represent, the Blast/IQF area read over 100 ppm right around the time the #1 blast cell door was opened. We'll assume here the real number was 200 ppm. This area is:

$$(63' \times 50' \times 27') + (54' \times 50' \times 10.5') = 113,400 \text{ ft}^3 \text{ in volume}$$

If we assume the measured ammonia concentration is consistent through this volume (a conservative assumption, since ammonia is denser than air, the measured concentration is likely much higher than the average concentration in this space), amount of ammonia present is:

$$113,400 \text{ ft}^3 \times (200/1,000,000) = 22.68 \text{ ft}^3 \text{ of ammonia vapor.}$$

Using a density of about 0.045 lb/ft³, this represents $22.68 \times 0.045 = 1.02$ pounds of ammonia. The amount of ammonia measured in the debone department at about the same time (98 ppm) is about 1.3 pounds of ammonia. Concentrations measured in most other parts of the plant were much lower (10-30 ppm). Therefore, the amount of ammonia vapor measured in the plant area probably only totaled about 5 pounds.

At 12:45 AM, about 15 minutes after anyone at Peco had reason to believe the amount of ammonia released could be large enough to exceed the CERCLA RQ, Peco notified the National Response Center (NRC), the Mississippi Emergency Management Agency, or MEMA (the SERC) and the Local Emergency Planning Coordinator (LEPC) of the situation. At the time of notification, most of the release was confined to the #1 blast freezer.

At about 3:30 AM a 12-inch hole was cut in the back wall of the #1 blast cell, which happens to be an exterior building wall. The wall is 12" thick Styrofoam insulation with metal cladding on both the interior and exterior faces. An electric fan was placed against the outer face of the wall to draw ammonia vapors from inside the #1 blast cell to outside both the cell and the building.

At the same time the fan was installed, a hose-fed water spray nozzle was installed to blow a water curtain across the discharge side of the fan. This was done to control and minimize ammonia vapors being drawn from the cell. The discharge location was continuously monitored for odor by employees, and, based on their observation, the spray system was highly effective in absorbing ammonia vapors discharging from the fan.

The fan and water spray were turned off at approximately 9:30 AM on 5/12/12. Therefore, the fan/spray operated for about 6 hours. The spray distributed water at about 2 gallons per minute, so about:

$$2 \text{ gal/min} * 60 \text{ min/hr} * 6 \text{ hrs} = 720 \text{ gallons of water}$$

were sprayed to control ammonia.

An earthen storm ditch originates near the location where the fan/spray were operating. Spray water accumulated in the ditch. Much of the liquid was absorbed in the ground. However, as the soil in the ditch became saturated, water did begin accumulating and flowing. An earthen berm was constructed downstream (but still onsite) across the ditch at about 5:00 AM, about 1.5 hours after spraying began, to prevent offsite escape of spray water.

Based on observations made at the time of the incident and on my site visit, no spray water escaped the site. This was easily confirmed because upstream of the berm, grass in the ditch was dead due to contact with concentrated ammonia/water solution. Downstream of the berm, there was no evidence of stressed plant life in the ditch.

After the incident, approximately 10 yards of soil were removed from the ditch from locations where the grass had died. This soil was placed in a pile on plant property onsite on plastic sheeting.

At approximately 1:30 PM on 5/12/12, 13 hours after the #1 cell as discovered as the source of the ammonia leak, the doors to the #1 blast cell were opened to allow full ventilation.

The #1 blast cell was fully emptied by about 10:00 AM on 5/13/12, allowing access for an inspection by plant personnel. A subsequent investigation revealed that fan blades broke off an evaporator coil fan and pierced the evaporator coil, allowing the ammonia to escape. The mechanical failure of the fans occurred in a sealed, highly-insulated freezer cell. Further, the area outside the cell is a noisy operating area of a manufacturing plant. It is therefore not unusual that the incident went undiscovered for approximately an hour after it occurred, which is when we believe enough released ammonia had escaped the cell to be detected by an employee working near it.

QUANTIFYING THE RELEASE

The release of ammonia (as defined under 40 CFR Part 302) from the refrigeration system at Peco Foods in Bay Springs on 5/11 – 5/12/12 occurred through a complex set of circumstances. These circumstances must be analyzed in sequence to obtain an estimate of the release. The elements of the sequence are:

1. Evaporator coil was pierced, ammonia continued to be injected into the system, but the system was still under vacuum
2. Evaporator coil was pierced, ammonia continued to be injected into the system, and the system was not under vacuum
3. Evaporator coil was pierced, ammonia continued to be injected into the system, vacuum was restored to the system.
4. Pierced evaporator coils were valved off, stopping the injection of ammonia into the system.
5. Ammonia in the blast cell leaked through small openings to equalize pressure with surrounding environment
6. Hole was cut into cell wall. Mechanical ventilation with vapor capture installed and operated.

AMMONIA REFRIGERATION SYSTEM DETAILS

The location in the system where the breach occurred was the evaporator coil in the #1 blast freezer cell. The evaporator coil is an exposed metal pipe, wrapped in a repetitive serpentine pattern. It is where heat transfer actually occurs, absorbing heat from the exterior of the system and cooling off the freezer cell. The refrigerant liquid, in this case ammonia, is heated by contact with the pipe wall, which is, in turn in contact with warmer exterior air. As it is heated, a portion of the refrigerant is vaporized. The mixed ammonia liquid/vapor is drawn through the coils by vacuum to the suction of the compressor, located on the downstream side of the evaporator coil.

As described above, there is a transition across the evaporator coil from pressure to vacuum. Based on prior work done by Peco, it is estimated that at the point of breach, the system is normally under vacuum and is about 3 psi less than the suction gauge reading at the compressor suction. The normal suction pressure reading is:

-15 inches of Hg gauge / -7.37 psig / 5.9 psia

Normal pressure at the breach is then estimated:

-4.37 psig / 10.3 psia / 0.7101 bar

In the Peco refrigeration system, liquid ammonia is fed by pump to about 12 evaporator coils in 6 different blast freezers. The pump discharge pressure is approximately 20 psig. From the discharge of the pump, ammonia flows through an expansion valve. This expansion valve creates a pressure drop in the coil. However, system pressure on the downstream side of the expansion valve is not measured until the suction pressure indicator is reached. Therefore, pressure at various locations in the evaporator coil must be estimated.

The evaporator coil is $\frac{3}{4}$ " ID pipe. The hole created during this incident was measured by calipers on the FC&E site visit to be $\frac{3}{8}$ " diameter, or about half the diameter of the pipe.

PHASE I - EVAPORATOR COIL PIERCED; SYSTEM STILL UNDER VACUUM

The volume of ammonia increases tremendously when it transitions from a liquid to a gas. At -40F, the approximate temperature in the system at the evaporator coil, the expansion factor for ammonia is estimated to be 828. That is, the volume of a pound of ammonia vapor is 828 times more than the volume of a pound of liquid ammonia. Assuming 5% of the ammonia flow evaporates by the time it reaches the hole in the coil, each pound of ammonia is:

$0.05 * 142.8 \text{ gal/lb (density of ammonia vapor at -40F)} = 7.14 \text{ gals vapor}$

$0.95 * 0.18 \text{ gal/lb (density of ammonia liquid at -40F)} = 0.17 \text{ gals liquid}$

Total volume = 7.31 gals @ 2.3% liquid, and 97.7% vapor

So, the ammonia flow in the area of the hole is basically a wet vapor. Flow in the coil would behave as a gas, not a liquid, under these conditions. So long as the system is under vacuum at the location of the hole, it would be pulling this wet vapor through the system to the compressor. It would also be sucking outside air into the hole. This entry of air into the system is almost certainly what caused the discharge pressure of the compressor to rise. Based on the conditions described above, we estimate that no ammonia was lost while the hole was under vacuum, which was the case from the start of the incident up until approximately 11:00 pm on 5/11/12.

PHASE II - EVAPORATOR COIL PIERCED; SYSTEM VACUUM LOST

After the compressor shut down and system vacuum was lost, we estimate that all ammonia pumped into the coil was released through the pipe hole into the blast cell. This condition lasted from about 11:00 until about 11:55 (55 minutes), when the compressor was turned back on. The amount of this release is estimated to be:

Assumptions:

- Hand expansion valve (HEV) - Hansen 1" FPT Screwed Bonnet HEV (Old Style) 2-1/2 Rounds Open; from Curves $C_v = 0.4$
- Liquid pressure before HEV = 20 psig (34.7 psia)
- Pressure drop across coil to hole = 2 psig
- Suction Pressure = pressure at the hole = 14.7 psia.
- Liquid ammonia density = 43.28 lb/ft³; specific gravity (SG) = 0.7

Pressure drop across HEV (Δp) = $34.7 - 2 - 14.7 = 18$ psi

$C_v = q * \text{SQRT}[SG/\Delta p]$

Therefore; $q = C_v/\text{SQRT}[SG/\Delta p]$

Where q = flow

C_v = valve constant

SG = specific gravity

Δp = pressure drop

$0.4/\text{SQRT}[0.7/18] = 2.028$ gal/min

$(2.028 \text{ gal/min})/(7.48 \text{ gal/ft}^3) = 0.271 \text{ ft}^3/\text{min}$ (as liquid)

$0.271 \text{ ft}^3/\text{min} * 43.28 \text{ lb/ft}^3 = 11.73 \text{ lb/min}$

$11.73 \text{ lb/min} * 60 \text{ mins} = 704 \text{ lbs}$, or about 123.7 gallons, was released into blast cell.

It is assumed here that all ammonia pumped into the system during this phase escaped through the hole in the pipe.

When this material was released from the pipe, some of it vaporized and some likely spilled as liquid onto the wooden walkway below the evaporator. The boiling point of ammonia at atmospheric pressure is -28°F. It is uncertain how much ammonia was exiting the pipe as vapor and how much as liquid. The liquid fraction would have rolled off this walkway onto boxed frozen poultry product below it. Some of the material striking the chicken would have reacted with the frost (water) covering on the chicken, some may have been heated by the chicken and evaporated, and still more may have reached the concrete floor of the blast cell. There was no visual evidence of liquid flow, but a material as volatile as ammonia may have left no such evidence. This condition lasted from approximately 11:00 PM until approximately 11:55 AM.

PHASE III - EVAPORATOR COIL PIERCED: SYSTEM VACUUM RESTORED

It is often difficult to determine the location of a refrigeration system problem with the compressor turned off. This was the case in the Peco Bay Springs event. The compressors on the system automatically turned off somewhere between approximately 10:26 PM and 10:33 PM due to excessive compressor discharge pressure. At 11:50 PM, less than an hour after a problem had first been detected when workers smelled ammonia outside the cell, the compressors were turned back on manually to assist in determining the nature of the problem.

At 11:50 PM, the compressor was turned back on. By 11:58 PM, full vacuum had been restored to the compressor suction. We estimate that hole was back under vacuum at 11:55 PM. As with Phase I, we believe that basically no ammonia was leaving the system after 11:55 PM due to the vacuum conditions.

PHASE IV - EVAPORATOR COIL VALVED OFF

At approximately 12:30 AM, Kevin Scott was able to crack open the door to the #1 blast freezer cell. The odor immediately indicated the #1 cell to be the source of the problem, and the door was closed within a few seconds. Within five minutes, valves were closed, preventing the flow of additional ammonia into the compromised evaporator coil. After flow to the evaporator coil was stopped, there was still some amount of ammonia remaining in the coil between the hand expansion valve and the hole. We estimate this quantity of ammonia to be:

$$125 \text{ lbs} * 25\% = 31.25 \text{ lbs}$$

This is based on the system manufacturer's representation that, 1) while in operation, an evaporator coil holds 125 lbs of ammonia, and 2) approximately 25% of this mass would be held between the hand expansion valve and the hole. This percentage is a rough approximation based on the fact that the hole was located much closer to the HEV than the compressor suction.

PHASE V - AMMONIA LEAKAGE FROM THE BLAST CELL

When in operation, the blast freezer is closed. Though the freezer is not airtight, there would normally be little movement of air into or out of the freezer. Such movement could only be driven by differences in pressure between inside and outside the cell. Since air is not blown into or drawn from the cell under normal conditions, little air movement through these crack typically occurs.

In the calculations above, it was estimated that up to $704 + 31 = 735$ pounds of ammonia escaped the control of the piping and tanks of the refrigeration system. The dimensions of the cell are 105' long x 23' tall x 15' wide. Thus, the volume of the blast cell is 36,225 ft³. Assuming a -30F average temperature in the cell, 735 pounds

in the air flowing out the hole was higher. Later in the venting cycle, the solution concentration being produced was probably under 7%.

Peco employees were present continuously at the fan/spray operation discharge. While occasional light ammonia odor was noted, there were never any high odor levels encountered, indicating that concentrations after the spray were probably typically less than about 100 ppm. A concentration reduction from 320,000 to 100 ppm is a 99.96% reduction. Further, it is well known that ammonia reacts quickly and completely with water. Therefore, the assumption of 90% capture seems very reasonable and conservative.

With these calculations, the worst-case release amount would be:

$$235 \text{ lbs (from crack leakage)} + 50 \text{ lbs (from controlled ventilation)} = 285 \text{ lbs}$$

MITIGATING FACTORS

As mentioned earlier, ammonia vapor reacts readily and quickly with water to form ammonium hydroxide. There was approximately 145,000 pounds of chicken in the cell, which is well over 50% water (72,500 pounds). It is not possible to know how much liquid ammonia may have spilled onto the boxed chicken, or how much vapor may have absorbed on the frost covering of the chicken. However, we can make some reasonable assumptions.

For instance, if 2% of the chicken weight is the outer frost layer, and this frost absorbed vapor or spill to an ammonia concentration of 10% ammonia, approximately 290 pounds of ammonia would have been absorbed on the chicken as ammonium hydroxide, leaving 445 pounds of ammonia in vapor. If this level of absorption occurred, about 85 pounds would have leaked through the cracks, and about 37 pounds would have escaped capture though the water spray, for a total release of 122 pounds. The captured ammonium hydroxide $\{(290 * (35/17)) = 597 \text{ pounds}\}$ left the site as discarded chicken.

This simple illustration shows that ammonia absorption onto chicken could reasonably have a significant impact on the release quantities. It would not be completely unreasonable to believe that the actual amount of released to the environment could be below 100 pounds. However, the meat in the blast cell was disposed quickly after it was removed, and it was not tested. Therefore, it is not possible to prove the mass of ammonia bound to the chicken.

Also, ammonia vapors would absorb into any condensate (probably frozen) that was not directly associated with the chicken. For example, on FC&E's site visit, small clumps of white mass were visible on the freezer walls and in the evaporator condensate drain pan (see Fig 10), 10 days after the release. This white mass was not tested but is in all likelihood ammonium hydroxide. We have no estimate of the amount of condensate typically present in a blast freezer.

Regardless of the scenario modeled, most of the ammonia that escaped the refrigeration system was captured in water and did not leave the site as ammonia.

SUMMARY

Because of unquantifiable variables, an exact estimate of the amount of ammonia released on 5/11/12 – 5/12/12 at Peco Foods in Bay Springs is not possible. Some ammonia was definitely released, because it was smelled outside the plant building. However, these did not seem to be high, long-lasting concentrations. So we estimate that the release was, at maximum, 285 pounds, and, at minimum, 85 pounds (high absorption on chicken and an increased absorption rate of the water spray).

Further, Peco did make timely notifications under applicable laws. Other than a few small detections by plant personnel, no one knew of any sizeable release because nearly all of it had been contained in the blast freezer for a period after the release. Until Cell 1 was opened at approximately 12:30, there was no indication of a release possibly in excess of 100 pounds. Notifications to the LEPC, SERC and NRC were made within 15 minutes of the discovery in Cell 1.

If you require any additional information, please let me know.

Sincerely,
FC&E Engineering, LLC

Trey Fleming

Trey Fleming, P.E.
Senior Engineer
601-529-6793

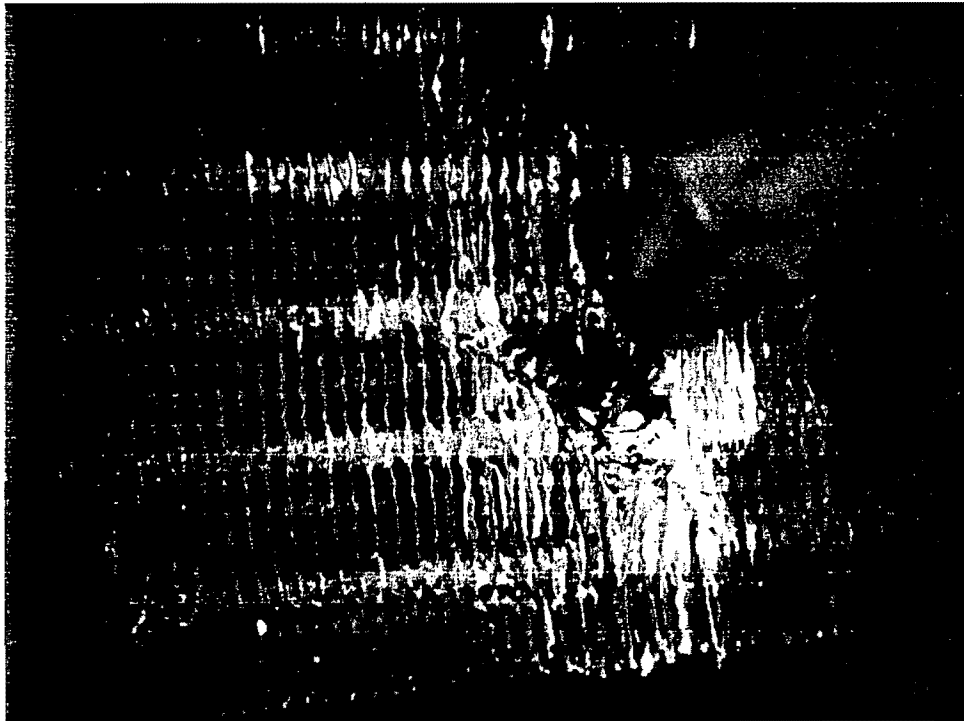


FIG 1 – Ruptured Evaporator Coil

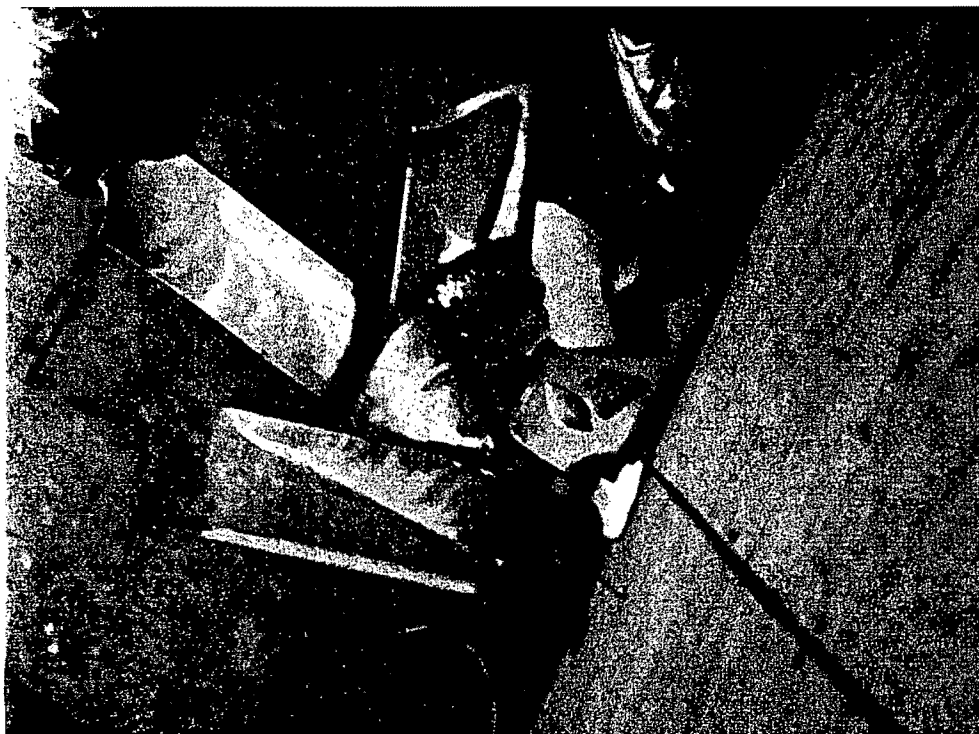


FIG 2 – Shattered Fan Blades



FIG 3 – Evaporator Fan Shaft w/Blades Broken Off



FIG 4 – Evaporator/Fan Assembly Mounted in Blast Freezer



FIG 5 - Blast Unloading Area



FIG 6 - Vent Hole Cut in Exterior Wall of Blast Cell #1

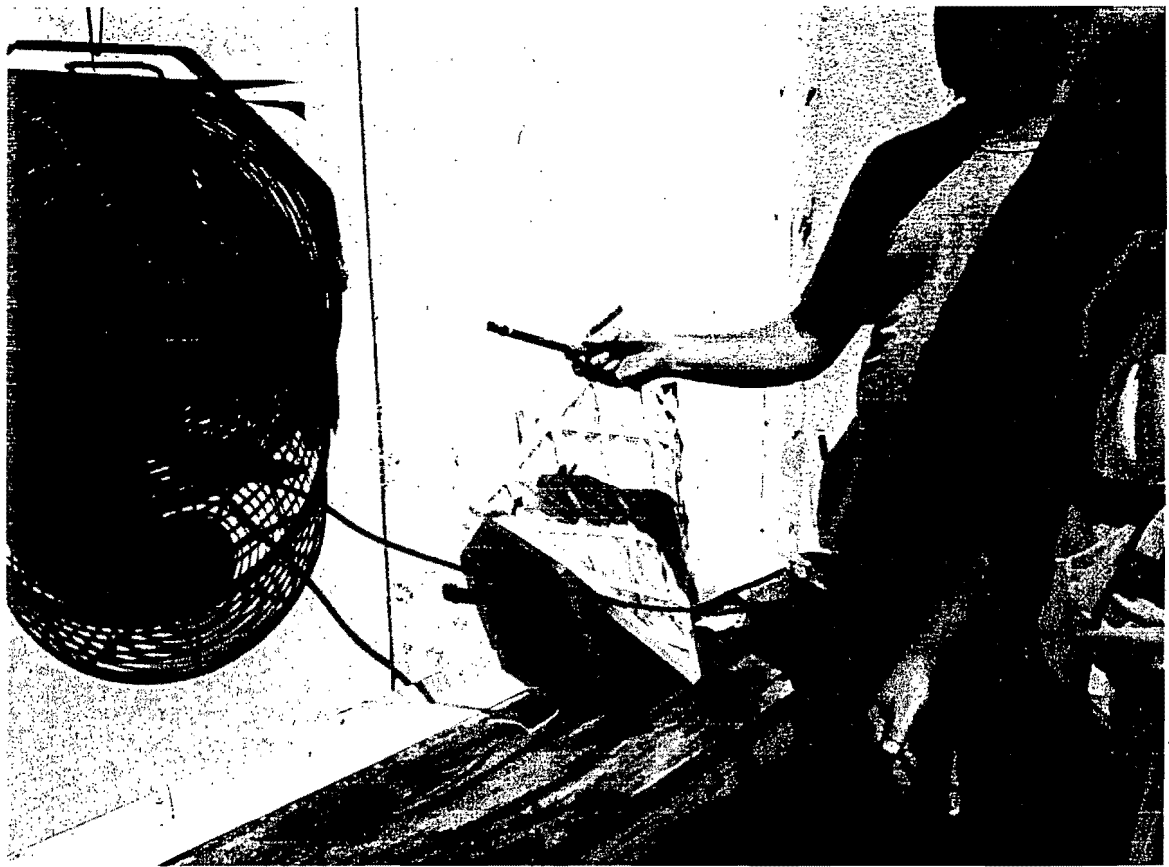


FIG 7 – Vent Fan Used to Draw Vapors Thru Vent Hole to Exterior (Spray Nozzle Held to Demonstrate How Water Was Sprayed During Venting)

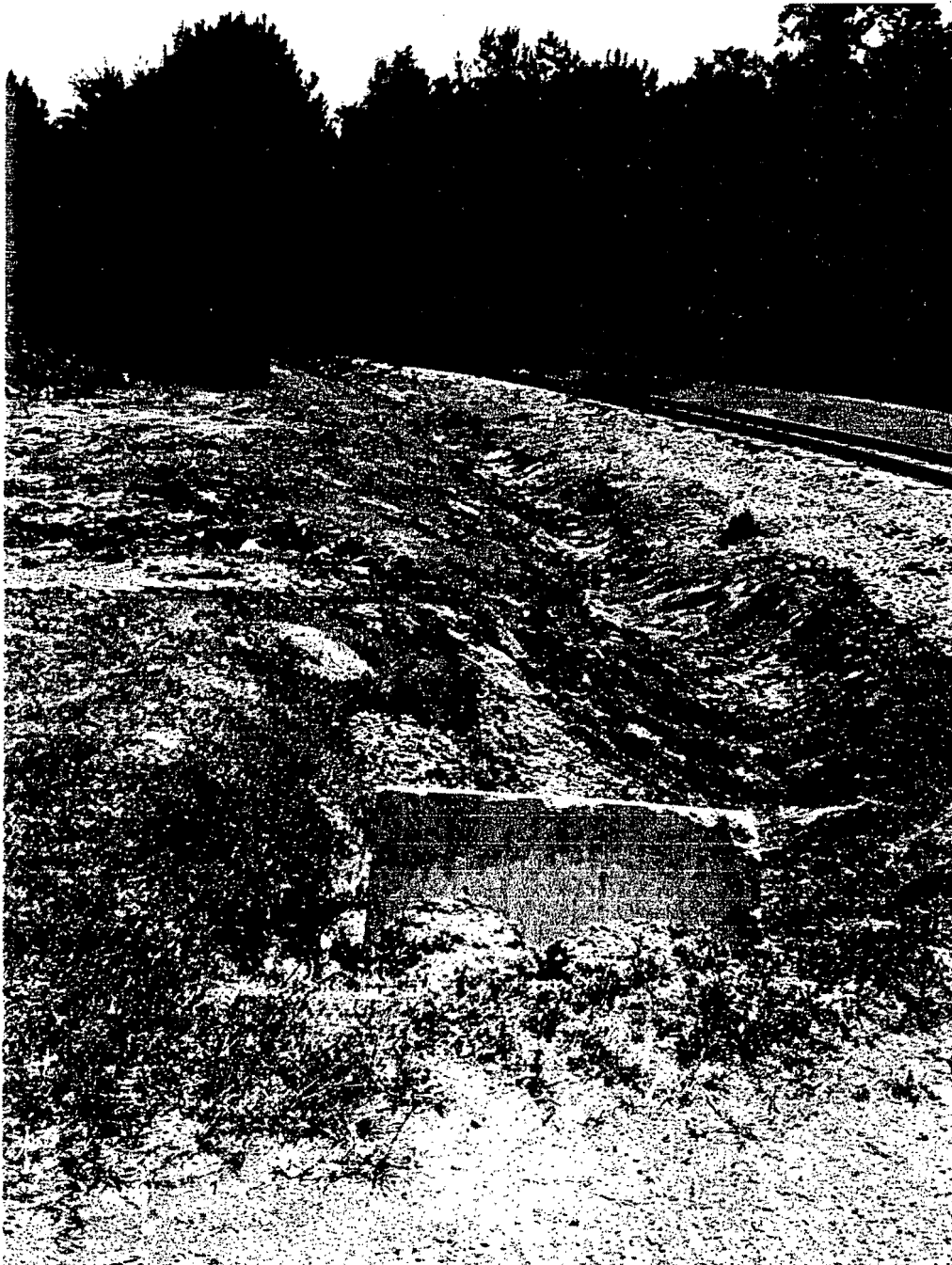


FIG 8 – Ditch Where Aqua Ammonia Flowed Away From Plant Building,
Looking Away From Plant



**FIG 9 – Ditch Where Aqua Ammonia Flowed Away From Plant,
Looking Toward Plant
(Berm Visible In Shadows Prevented Flow Beyond This Point)**

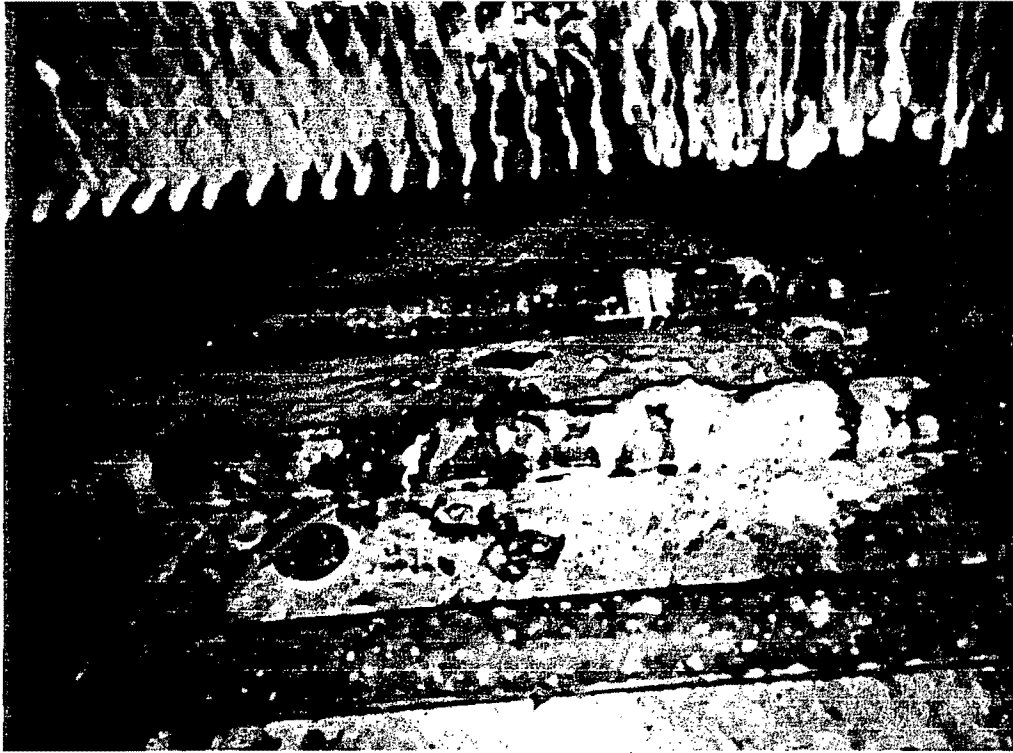


FIG 10 – White Material Visible On Evaporator Coil Fins and Drain Pan
(Believed to Be Ammonium Hydroxide)

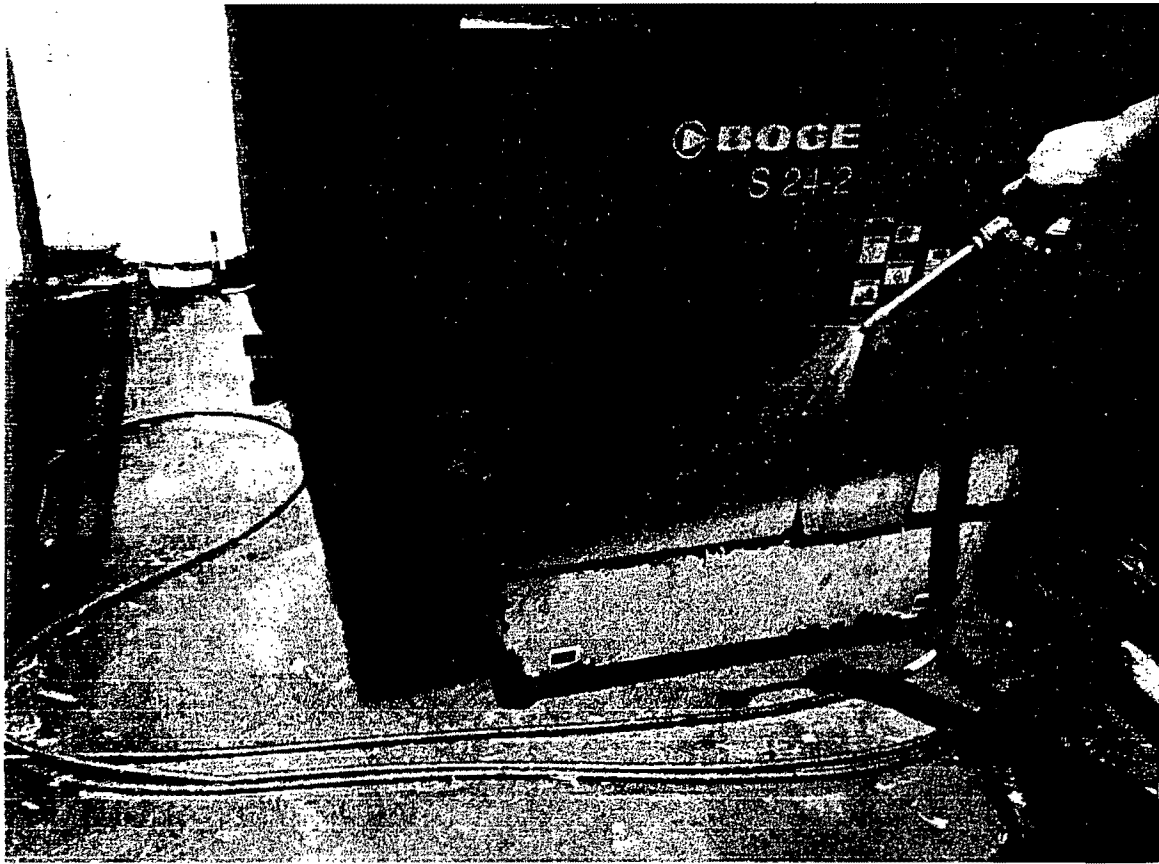


FIG 11 – Demonstration of Fan Spray Nozzle

FIG 12 - Aerial Photo of Peco Bay Springs MS Plant

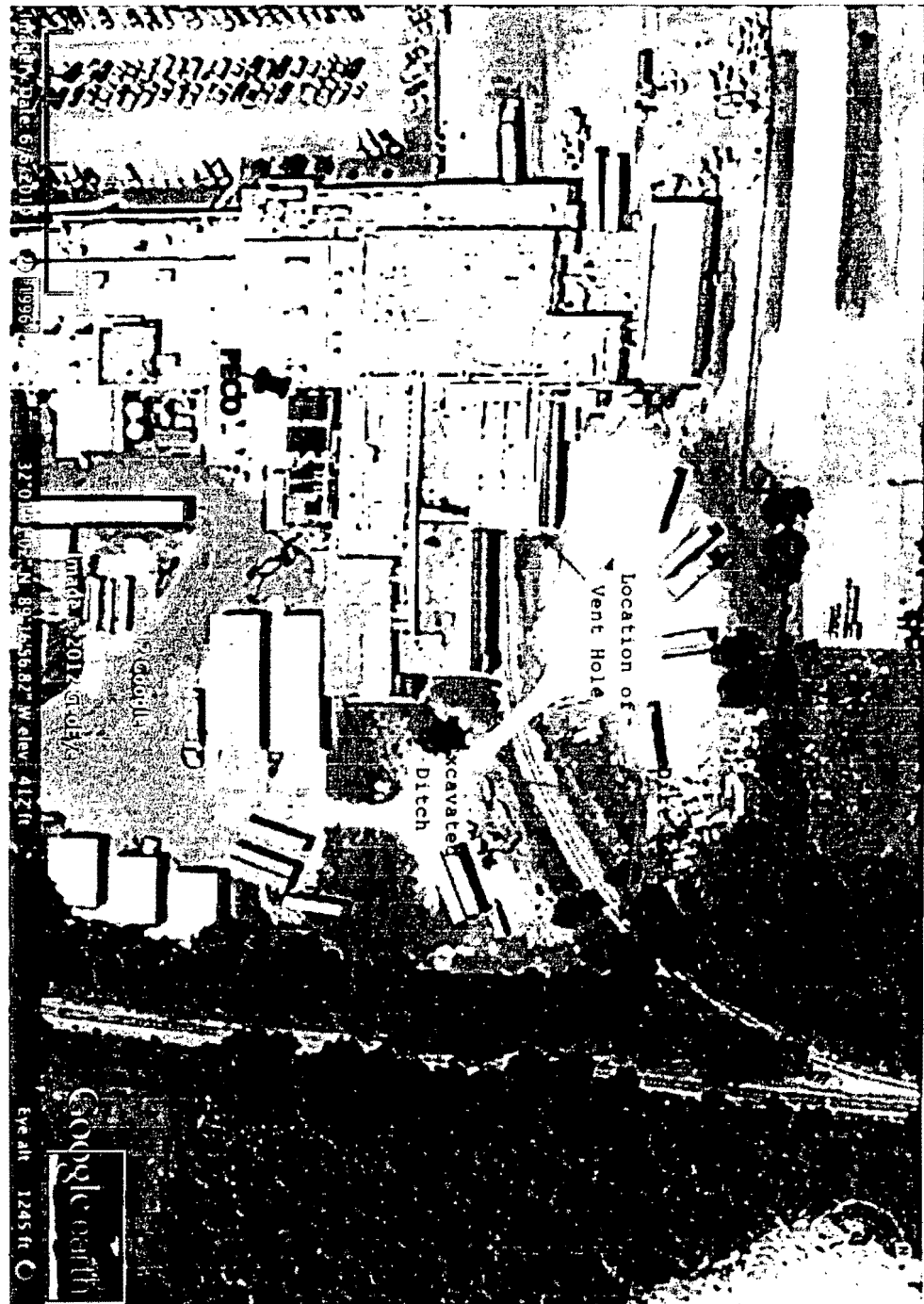


FIG 13

Discharge Pressure

PRESSURE
(PSIG)

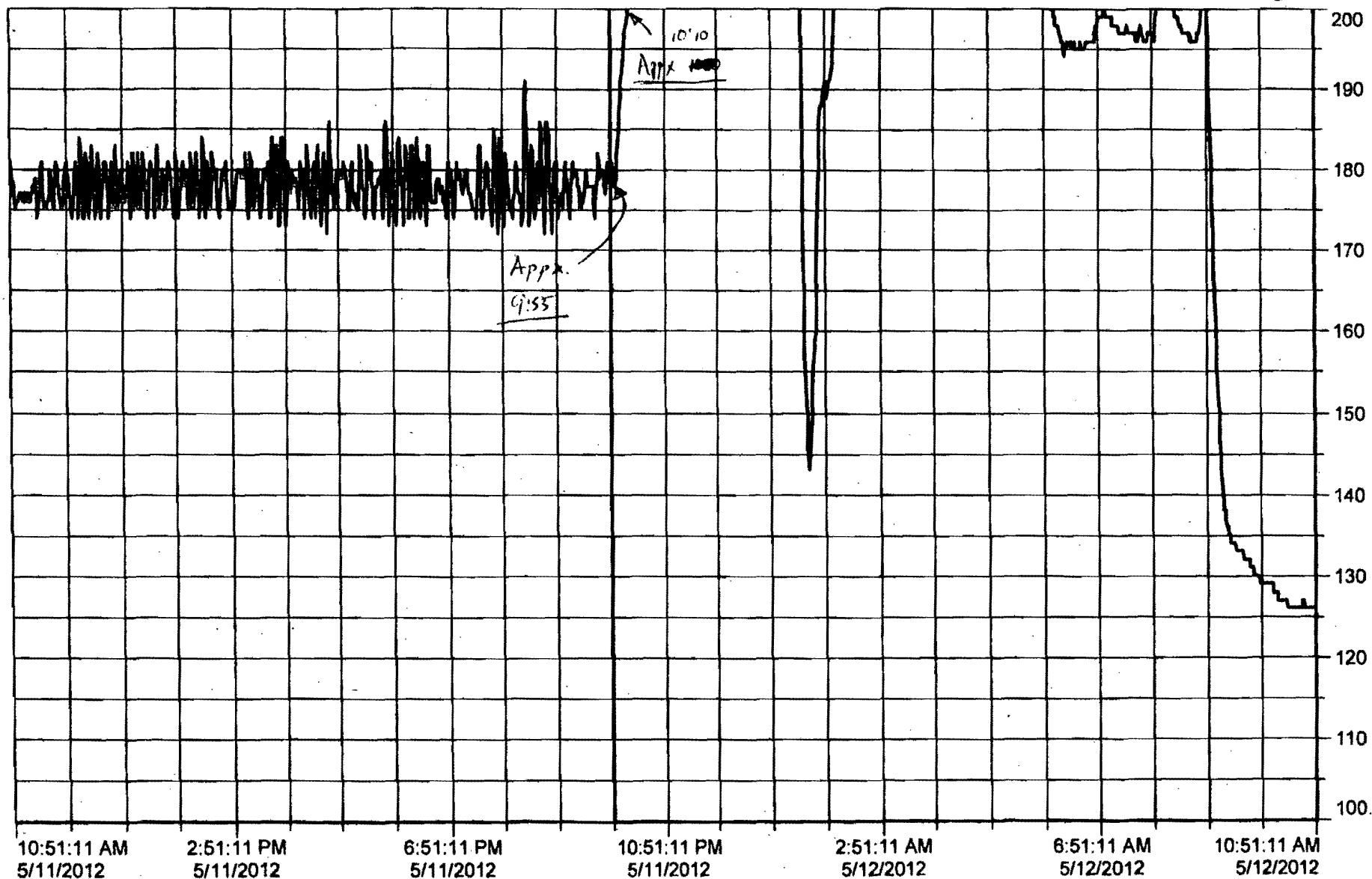


FIG 14

Blast & Spiral Suction Pressure

PRINT
Oldest Data
Scroll Backward
Scroll Forward
Newest Data
EXIT

PRESSURE
(inches H₂O gauge)

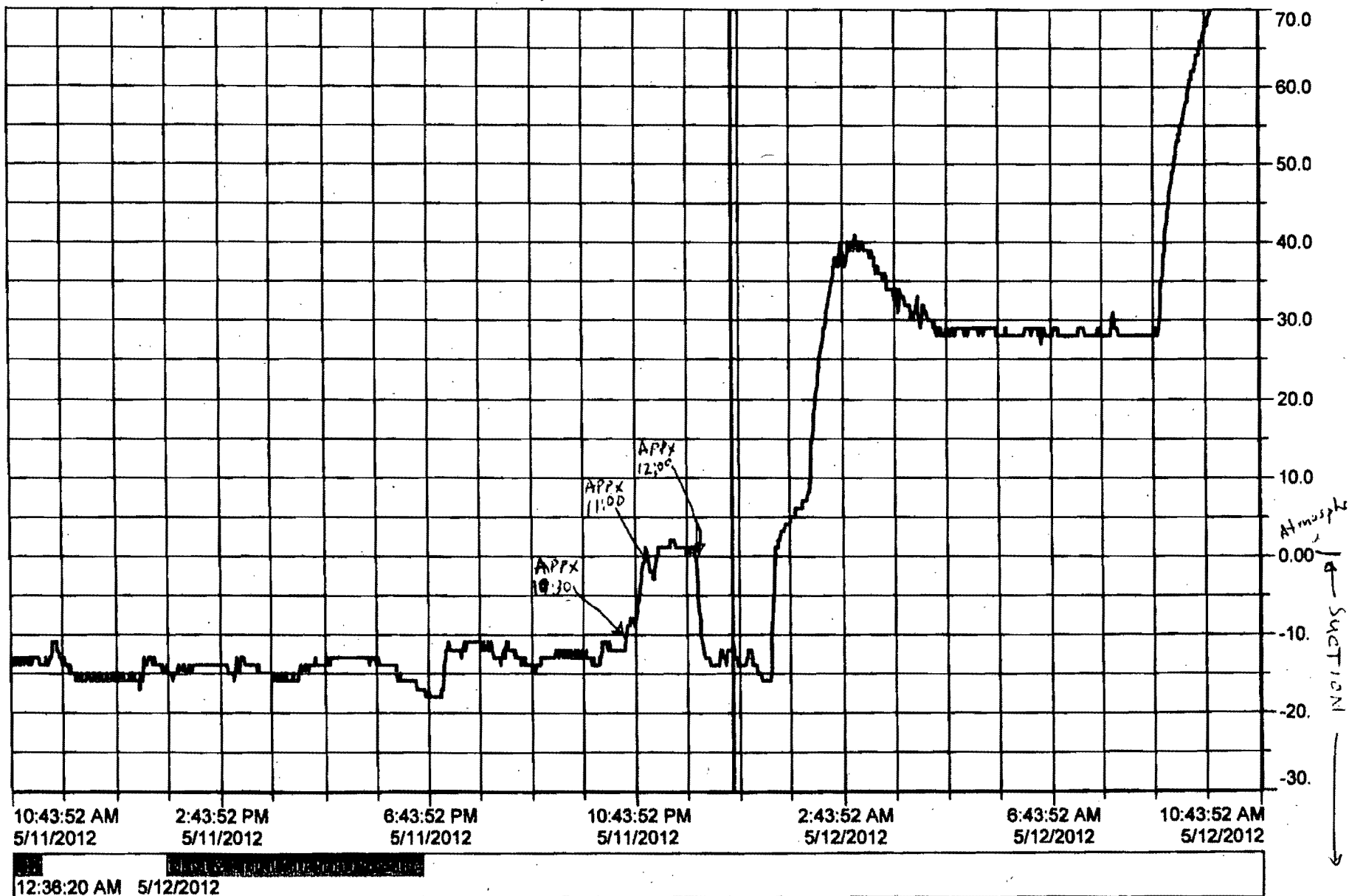
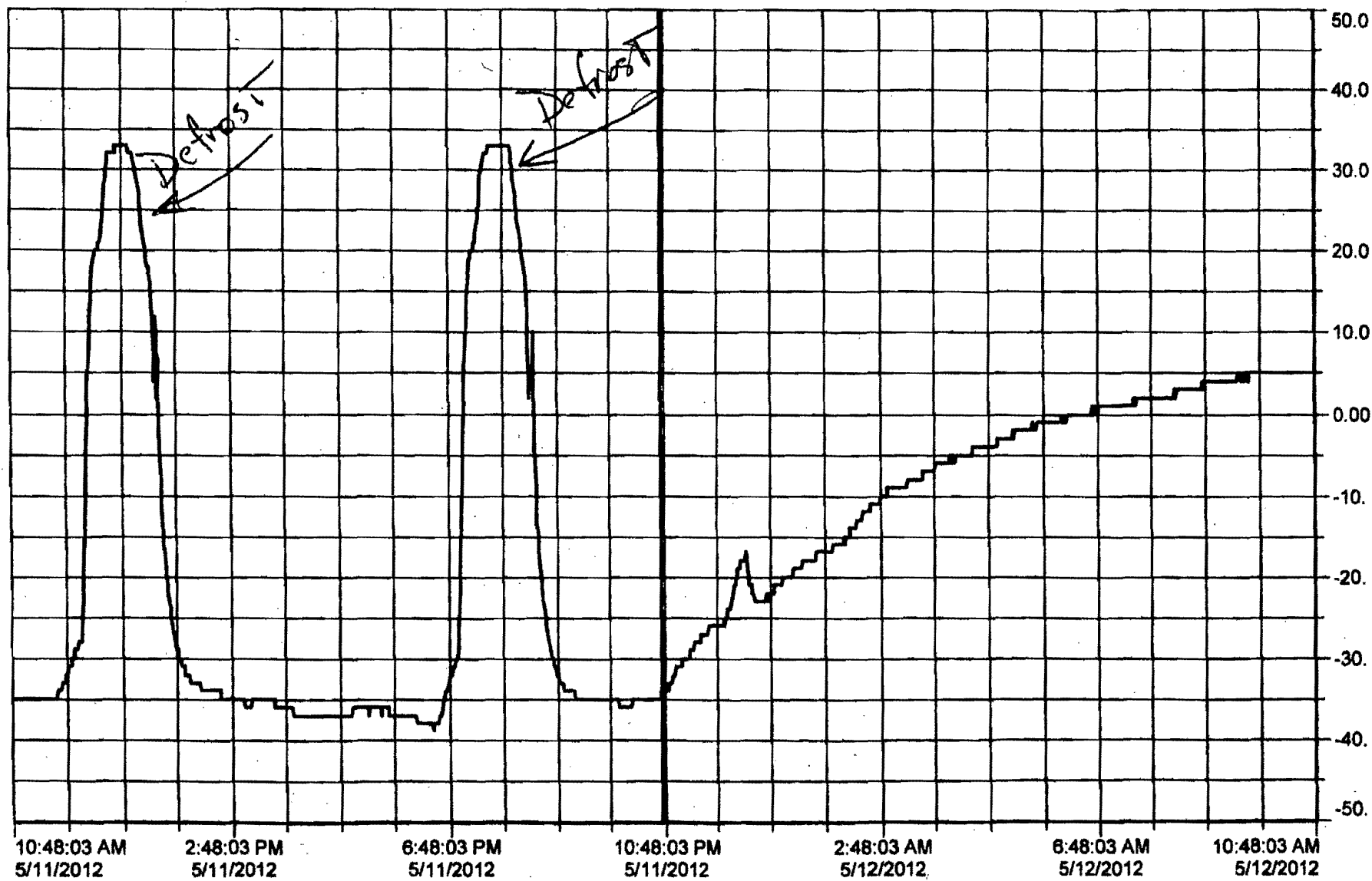


FIG 15

Blast Freezer #1

PRINT
Oldest Data
Scroll Backward
Scroll Forward
Newest Data
EXIT

TEMPERATURE
(°F)



10:44:46 PM 5/11/2012

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September 6, 2012

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Mr. Karl D. Wilson
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Lynda C. Crum
Associate Regional Counsel
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RE: Peco Foods, Inc., Bay Springs, Mississippi Facility
Response to EPA's August 20, 2012 Settlement Correspondence

Dear Mr. Bookman, Mr. Wilson, and Ms. Crum,

As you know, our law firm represents Peco Foods, Inc. ("Peco") in this matter. We received EPA's letter dated August 20, 2012. In that letter, EPA outlined four separate options to resolve alleged violations of CERCLA § 103 and EPCRA § 104 arising out of an accidental ammonia release that occurred at Peco's Bay Springs, Mississippi facility on the night of May 11, 2012. The options offered by EPA include the following: (1) full payment of a proposed penalty settlement amount (\$34,515); (2) propose a Supplemental Environmental Project ("SEP") to mitigate some portion of the proposed penalty settlement amount; (3) request a hearing; or (4) claim inability to pay.

Peco is willing to consider payment of a penalty settlement amount in this matter, but the penalty proposed by EPA in its August 20, 2012 is based on assumptions and errors that are inconsistent with the experiences of Peco's employees and the facts as determined by Peco's thorough investigation of the May 11, 2012 incident. Although the settlement letter does not provide an abundance of detail, it is clear that EPA calculated the proposed penalty as a "Level 2B" penalty under EPA's penalty policy matrix for CERCLA § 103 and EPCRA § 104. Pursuant to EPA's EPCRA and CERCLA Enforcement Response Policy (the "Penalty Policy"), a Level 2B violation indicates that EPA reached two conclusions about this matter. First, EPA

concluded that Peco notified the appropriate authorities between one hour and two hours after it had knowledge of the release of a reportable quantity of ammonia. Second, EPA concluded that the amount of ammonia released during the incident was greater than five times but less than ten times the reportable quantity for ammonia. In other words, EPA concluded that the amount of ammonia released during the incident was between 500 pounds and 1000 pounds of ammonia. Each of these two conclusions by EPA in this matter is inconsistent with the facts of the May 11, 2012 release event at Peco's Bay Springs facility. The following paragraphs provide details regarding the facts of that incident and the evidence establishing those facts. The remaining section of this letter describes a penalty calculation that is consistent with the facts in this matter and that Peco would be willing to consider to resolve the alleged violations.

Length of Delay Prior to Notification to Federal, State and Local Authorities

The first aspect of EPA's penalty calculation involves the length of delay prior to Peco's notification of local, state, and federal authorities regarding the release. EPA's contention is that Peco's notification occurred between one hour and two hours late. With regard to the required timing for notification under CERCLA § 103 and 40 CFR §302.6 state:

Any person in charge of a vessel or...facility shall, as soon as he or she has knowledge of any release...of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center.

This same standard applies to emergency release reporting required by EPCRA § 304, except that the required notifications under that statute are to local and state level authorities rather than to the National Response Center. The plain language of the regulation requires that the person in charge at a facility make required notifications when he or she has knowledge of a release of a reportable quantity. According to the Penalty Policy, such notification should be made within 15 minutes after the facility's representatives know or have reason to know of a release involving a reportable quantity. Knowledge in this context may be "actual" or "constructive." Constructive knowledge does not require absolute certainty, but rather has been defined by reviewing courts as "information that a release occurred, plus some assurance, based on 'perception by the senses, or intuition,' that the release equals or exceeds the reportable quantity." *In re Mobil Oil*, 5 E.A.D. 490, 509 (EAB 1994); *In re Thoro Prods.*, 1992 WL 143993, at *9.

In this matter, Peco employees did not have knowledge of a release of a reportable quantity until Peco's Refrigeration Manager, Kevin Scott, opened Blast Freezer #1 and determined – based on his sensory perception, his knowledge, and his experience – that the release in question may have involved a reportable quantity. Scott opened Blast Freezer #1 at approximately 12:30 a.m. on the morning of May 12 and Peco made notifications to local, state, and federal authorities at approximately 12:45 a.m. on May 12. In assessing its proposed penalty, EPA concluded that Peco made these notifications between one hour and two hours after its representatives knew or had reason to know that the release incident involved a reportable quantity. At the Show Cause Meeting, EPA supported this conclusion by claiming that Peco should have initiated emergency notification immediately after evacuating its employees from its

Bay Springs facility at approximately 11:30 p.m. EPA claimed that at the time Peco evacuated its employees from the facility, it had “constructive knowledge” that the release event involved a reportable quantity and that notification should have occurred at that time.

EPA’s allegation that Peco had “constructive knowledge” of a reportable release at 11:30 p.m. is inconsistent with the facts in this matter and inconsistent with existing case law on this issue. At 11:30 p.m. on May 11, Peco’s on-site management decided to evacuate the Bay Springs facility. This decision was reached after approximately twenty minutes of unsuccessful searching for the source of a faint ammonia odor. Given the strong odor associated with very small quantities of ammonia and the existence of only a light ammonia odor in certain portions of the Bay Springs facility, Peco did not know, nor should it have known, that the release event involved a reportable quantity of ammonia. EPA nevertheless has apparently concluded that Peco’s decision to evacuate its Bay Springs facility at 11:30 p.m. triggered its responsibility to make emergency notification. This conclusion is inconsistent with the sensory perceptions, knowledge and experience of Peco employees actively searching for the source of the release from 11:10 p.m. until 12:30 a.m. on May 11 and 12, 2012.¹

An important judicial interpretation of constructive knowledge is that “a facility cannot shield itself from knowledge of the release by slowly investigating the situation while it focuses on normal business operations.” *In re Mobil Oil*, 5 E.A.D. 490, 511-512 (EAB 1994). EPA cannot reasonably assert that Peco focused on normal business operations while slowly investigating this release event. Rather, within minutes after determining that a release was ongoing, Peco evacuated its employees and focused exclusively on finding the source of the release. While the event may or may not have required evacuation of employees, Peco decided to err on the side of caution in favor of protecting employee safety and health. However, at the time Peco decided to evacuate its employees, all Peco management experiencing the release understood that such a faint ammonia odor did not constitute any significant threat to the environment or the general public outside of Peco’s facility walls. At 11:30 p.m., the release event as experienced by Peco’s on-site management required the actions that Peco took – to take the focus off of its normal business operations and place that focus on finding and stopping the release as quickly as possible.

Finally, EPA’s focus on Peco’s decision to evacuate its employees as its trigger for imposing a penalty in this matter creates a perverse disincentive for Peco to evacuate employees during future similar events involving light ammonia odors. To the extent that Peco ever had any knowledge (actual or constructive) of a release of a reportable quantity of ammonia, that knowledge did not arise at 11:30 p.m. Rather, it arose during Kevin Scott’s effort to isolate the

¹ As described in detail in the next section of this letter, at 11:30 p.m. the release in question did not yet amount to a reportable quantity. In fact, due to the containment of ammonia within Blast Freezer #1 and the absorption of ammonia into frost, ice, and chicken product in that freezer, the entire release may not have ever involved a reportable quantity and certainly did not appear to involve a reportable quantity to all Peco employees actively searching for the source of the release. Furthermore, the release of ammonia into Blast Freezer #1 does not constitute a release “into the environment” as contemplated in 42 U.S.C. § 9601(22) and 40 CFR § 302.3. In fact, such a release contained within the Peco workplace environment is specifically exempted from emergency notification requirements and – at least as of 11:30 p.m. on May 11 – required no notification to local, state, or federal authorities under those statutes.

source of the leak within Blast Freezer #1. Accordingly, if Peco's emergency notification were late at all, it was only between 15 minutes and 1 hour after it had knowledge of a release potentially involving a reportable quantity. Therefore, the appropriate placement within the Penalty Policy matrix for the extent of the alleged violation is Level 3 rather than Level 2.

Quantity of Ammonia Released During May 11-12 Release Event

The second aspect of EPA's penalty calculation in this matter involves the total amount of ammonia released during the May 11-12 release event. EPA calculated its proposed penalty based on the conclusion that Peco released between 500 and 1000 pounds of ammonia over the course of the release event. EPA's assumption about the quantity of the release is wholly inconsistent with the conclusions reached by FC&E Engineering ("FC&E") after a full and thorough investigation of the release event. FC&E concluded that the release event involved a release of between 85 and 285 pounds of ammonia. FC&E's conclusion was based on its investigation and evaluation of six separate phases of the release event and the amount of ammonia released during each phase. Full details regarding FC&E's release calculation were provided to EPA in written form during our July 17 Show Cause meeting and a copy of that correspondence is attached for your reference. In summary, the release event occurred inside a sealed blast freezer at a temperature in the range of -40 degrees Fahrenheit that contained large quantities of packaged chicken product, product packaging, frost, and ice. Inside the freezer, much of the ammonia escaping from the pierced evaporator coil was absorbed in the chicken product, its packaging, and frost and ice in the freezer. A significant portion of ammonia not absorbed remained inside the sealed freezer until Kevin Scott opened its door at approximately 12:30 a.m. Only small quantities of gaseous ammonia escaped the freezer through leaks around the freezer door and its sealed edges.²

During our show cause meeting, EPA focused on two factors in determining the quantity involved in the release. First, EPA considered the release calculations prepared by Refrigeration Systems International, Inc. ("RSI"). Second, EPA claimed that it considered the quantity of the release to be based on the best information available to Peco at the time of reporting. EPA's conclusions based on these factors are inconsistent with the facts and the law. As we have detailed in previous correspondence, RSI's release calculations were inaccurate and grossly inflated. RSI made its calculations based on a worst case scenario without making a site visit to Peco's facility and based on a number of erroneous assumptions that led to an erroneous result. RSI incorrectly estimated the size of the hole in the evaporator coil, the temperature within the freezer, the gauge pressure, absolute pressure, leak rate, and leak duration. FC&E's thorough investigation revealed each of these errors and demonstrated the lack of merit in RSI's release calculation.

EPA also asserted that (for purposes of penalty calculation) the total amount of ammonia released should not be based on actual facts or on the results of a thorough investigation, but

² From approximately 11 p.m. until 12:30 a.m. (when Kevin Scott opened the freezer door to inspect it) on the night in question, the actual quantity of ammonia escaping through the sealed edges of the freezer was minimal. For this reason, Peco employees searching for the source of the release experienced only a light ammonia odor and had no basis to conclude that the release involved a reportable quantity

rather should be based on the best information available to Peco at the time it made the emergency notification. This theory of responsibility is wholly unprecedented and there is no statutory, regulatory, or guidance that supports this position. EPA's EPCRA and CERCLA Enforcement Response Policy (the "Penalty Policy") states: "For emergency response violations, gravity levels are based on the amount of hazardous substance or [extremely hazardous substance] released." Penalty Policy, Section V. C. 1.

It is true that parties considering whether a release involves a reportable quantity must use the best information available to them in deciding whether to make emergency notification to authorities. It is wholly improper, however, for EPA to ignore actual facts and base its proposed penalty in this matter on EPA's speculation about what Peco knew or should have known about the total quantity released at the time Peco made its emergency notification in this matter. Even if that were the appropriate standard to apply, at 12:45 a.m. on May 12 when Peco made its emergency notifications, Peco was aware of only a small quantity of ammonia that had actually escaped Blast Freezer #1 and the release had not yet even concluded at that time. The Penalty Policy gives EPA no discretion to determine the total quantity released based on its own unsubstantiated speculation about what Peco knew or should have known at the time it made emergency notifications. Consequently, EPA's proposed penalty calculation that assumes a release of between 500 and 1000 pounds is incorrect. Instead, if a penalty is even warranted in this matter, its calculation should be based on the total amount of ammonia released as determined by FC&E after its detailed investigation of this matter.

As stated, FC&E concluded that the release involved a total release of 85-285 pounds of ammonia. Accordingly, the gravity component of the proposed penalty should be calculated at a Level C because the total amount of ammonia released (if it exceeded the reportable quantity) was between one and five times the reportable quantity.

Proper Penalty Calculation

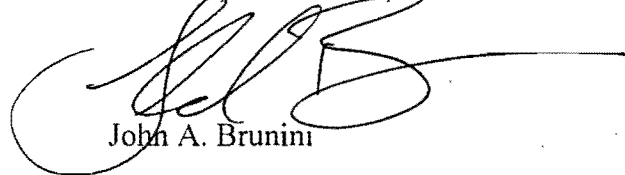
Certain facts in this matter are clear. First, if Peco's notification was late at all, it was late by only minutes after Peco had any knowledge – actual or constructive – that the release into the environment involved a reportable quantity. Second, if the total quantity of ammonia released exceeded the reportable quantity, it did so by a maximum of two to three times the reportable quantity. Based on these facts, EPA could exercise enforcement discretion and not impose any penalty in this matter. If EPA concludes that a penalty should be imposed, that penalty should be calculated as follows:

Statute	Chemical	Quantity Pounds	RQ	Date/Hour Late	Matrix Cell	Maximum Penalty	Proposed Penalty
CERCLA § 103	Anhydrous Ammonia	200	100	5/12/12 < 1 hour	1C	\$4,430	\$4,430
EPCRA § 304(a)	Anhydrous Ammonia	200	100	5/12/12 < 1 hour	1C	\$8,860 (\$4,430 x 2 RL)	\$8,860
Totals						\$13,290	\$13,290
Base Penalty (rounded to nearest \$100)							\$13,300
Cooperation (Good Attitude) - 25%							\$3,325
Willingness to Settle in 90 Days - 10%							\$1,330
Total Adjustments							\$4,655
Final Penalty							\$8,645

If EPA still believes that imposition of a penalty is warranted in this matter, the penalty calculation set forth above is based on accurate data and fact rather than speculation and erroneous assumptions. Peco is willing to consider settlement with EPA if such a settlement would be based on accurate data and factual information. Peco respectfully requests that EPA consider the information contained in this correspondence and advise whether it is willing to pursue a settlement based on the calculation set forth above. If EPA continues to assert that this matter is appropriately categorized as a Level 2B violation under the Penalty Policy, Peco will have no other choice but to request a hearing before an Administrative Law Judge.

Sincerely yours,

BRUNINI GRANTHAM GROWER & HEWES, PLLC



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July 17, 2012

Karl D. Wilson
EPCRA Enforcement Section
Air, Pesticides & Toxics Management Division
United States Environmental Protection Agency Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

RE: Peco Foods, Inc. Response to EPA Notice of Violation dated June 8, 2012
Bay Springs, Mississippi Facility

Dear Mr. Wilson:

As you know, Peco Foods, Inc.'s ("Peco") Bay Springs, Mississippi facility experienced an ammonia release event on the night of May 11, 2012 and early morning hours of May 12, 2012. Although Peco was not immediately aware of the source of the release, it occurred inside a blast freezer after a fan blade broke loose from its hub and struck (and pierced) a nearby evaporator coil in the freezer. Without knowing whether for certain whether the release involved a release of a reportable quantity of ammonia into the environment, Peco nevertheless reported this event to local, state and federal authorities at approximately 12:30am on May 12. Peco provided a written follow-up notification to local and state authorities on May 16, 2012. On May 23, 2012, Peco provided a "Detailed Incident Report" to Mr. Lawrence Fincher of EPA. The purpose of this incident report was to provide a specific description of the events and circumstances leading up to, during, and after the May 11 release event. On June 8, 2012, EPA issued a Notice of Violation to Peco, alleging that Peco had not timely notified local, state, or federal authorities of the May 11 release event and had not provided written follow-up notification to local and state authorities regarding the event.

Peco respectfully disagrees with the allegations contained in the June 8, 2012 Notice of Violation and looks forward to providing EPA all information and documentation necessary to resolve this Notice of Violation. Specifically, as detailed in Section I. below, Peco contends that, under the circumstances involved on May 11 and May 12, it made immediate notification to local, state, and federal authorities as required by applicable statutes and regulations. Peco also made proper written follow-up notification to local and state authorities on May 16, 2012. Finally, after a thorough investigation of the incident by FC&E Engineering, Inc., Peco is unable

to determine to any reasonable degree of scientific certainty whether the release event involved a reportable quantity. The uncertainty in quantifying this release arises as a result of a number of variables that are described in more detail in Section II., below.

Section I. Peco Provided Immediate Notification to Local, State, and Federal Authorities

As stated in Peco's Detailed Incident Report, submitted to Mr. Lawrence Fincher of EPA on May 23, 2012, Mr. Darrell Butler noticed a faint ammonia odor at approximately 11:10pm near the blast freezer unloading area. By 11:30pm, the faint ammonia odor was still present but its source had not been identified. In order to protect the health and safety of plant employees, Peco management ordered evacuation of the facility until the source of the release could be identified. At that time, the ammonia odor was still very light. Refrigeration Manager Kevin Scott ordered a re-start of the refrigeration system that had powered down so that the source of the faint ammonia odor could be identified.

At this time, because of the faint nature of the ammonia odor present, Peco personnel did not believe that the release to be a reportable event. After searching five different blast freezers for the source of the release, Kevin Scott opened the door to Blast Freezer #1 at approximately 12:30am. Immediately upon opening the door to Blast Freezer #1, Scott recognized a very strong ammonia odor inside and quickly closed the door. Only then did Scott determine, based on the strength of the odor within Blast Freezer #1, that the release inside the freezer was significant and warranted reporting. In order to stop the release immediately, Kevin Scott first initiated the necessary actions to close valves to each of the three evaporator coils inside Blast Freezer #1. Kevin Scott completed these actions at approximately 12:35am and then briefed Peco management on the source and significance of the release. Peco management initiated notification of local, state, and federal authorities at approximately 12:45am, very shortly after the briefing with Kevin Scott.

Until the moment that Kevin Scott opened Blast Freezer #1 at approximately 12:30am, Peco personnel believed the release of ammonia to be a minor event. Upon opening Blast Freezer #1, Kevin Scott took an appropriate action first – he initiated actions necessary to valve off Blast Freezer #1 and stop the flow of ammonia to it. Immediately thereafter, Scott briefed Peco management of the potential significance of the event. Applicable regulations require that notification of reportable releases occur “immediately” after any person knows or has reason to know of a reportable release. Peco complied with this immediate notification requirement. Within fifteen minutes of the first moment that Kevin Scott determined the nature of the release event, Peco made appropriate notifications to local, state, and federal authorities. Again, these notifications occurred within fifteen minutes of the first time that any Peco representative had reason to believe that the event may have involved the release of a reportable quantity. Peco's prompt reporting in this matter is consistent with EPA's EPCRA and CERCLA enforcement policies and does not warrant further enforcement action.

Section II. Peco is Unable to Determine With Scientific Certainty Whether the Release Event Involved a Reportable Quantity

As stated in Peco's May 23, 2012 Detailed Incident Report, Peco contracted Refrigeration Systems International, Inc. ("RSI") to prepare a calculation of the quantity of ammonia released during the May 11/May 12 event. RSI (without making a site visit) made an initial calculation based on a set of assumptions regarding diameter of the hole in the evaporator coil, the temperature within the freezer, the gauge pressure, absolute pressure, leak rate, and leak duration. We know for certain that nearly all of RSI's assumptions were incorrect and that its conclusion regarding the quantity of the release was incorrect.

Within four days after the event, Peco contracted FC&E to conduct a thorough investigation of the release event and prepare accurate release calculations. FC&E has completed its investigation and determined that the release event involved a release of between 85 and 285 pounds of ammonia. Due to a number of complex variables at play during the release event, it is not possible to demonstrate to any reasonable degree of scientific certainty that the release event definitely exceeded (or did not exceed) the reportable quantity of 100 pounds. As stated, the release event occurred initially within a Blast Freezer that maintains temperatures in the range of -40 degrees Fahrenheit. To maintain such temperatures, the freezer is sealed, but that seal is not impenetrable to an active and volatile gas like ammonia.

In order to determine the quantity of ammonia released, FC&E had to evaluate the release in phases. The first phase of the release involved the piercing of the evaporator coil and the flow of ammonia through the hole in the coil while the system was still under pressure. During this phase, the system maintained vacuum and very little, if any, ammonia was lost. The second phase of the release occurred when the system lost vacuum. For approximately 55 minutes, the system lost vacuum and ammonia released into the Blast Freezer. The third phase of the release occurred when system vacuum was restored and stopped the release of ammonia into the freezer. The fourth phase of the release occurred after the flow of ammonia to Blast Freezer #1 had been valved off. The fifth phase of the release occurred when Blast Freezer #1 experienced a slow leak of ammonia through its sealed edges. The sixth and final phase of the release occurred during Peco's ventilation of Blast Freezer #1 through a water spray.

Through a set of complex formulae and mathematical equations, FC&E calculated the amount of ammonia within the freezer through the fourth phase of the release (valving off of Blast Freezer #1). FC&E then calculated the amount of ammonia lost through leakage around the freezer's seal and the amount of ammonia lost during the controlled ventilation event. Because we cannot confirm with precision the state of the ammonia as it flowed through the hole in the evaporator coil, it is not possible to determine how much ammonia was absorbed in the items located in the freezer, including approximately 145,000 pounds of chicken product (which consists of over 50% water), frost and ice on the walls and product packaging, and the packaging itself. Assuming a high rate of absorption in these items and a high rate of ammonia capture during the controlled release event, FC&E arrived at a total released quantity of 85 pounds. A

high rate of absorption (and lower released quantity) is consistent with available anecdotal evidence. Such evidence includes eyewitness confirmations of the existence of only a very light ammonia odor around the freezer and during the controlled release and an ammonia odor on chicken product and packaging that was discarded after the event. If low absorption rates on product, packaging, ice and frost are assumed (although such is not consistent with anecdotal evidence), FC&E arrived at a total released quantity of approximately 285 pounds.

FC&E has advised that due to the unique set of variables involved in this release incident, it is not possible to conclude, based on any degree of scientific certainty, that the release event exceeded (or did not exceed) the 100 pound reportable quantity threshold. The only possible way to achieve some potential certainty would involve a controlled recreation of the event inside a test cell with similar characteristics and similar quantities of product and packaging. Such a test would potentially be dangerous, cost prohibitive, and likely be affected by unforeseen variables that might render it inaccurate. Accordingly, Peco has not initiated such testing.

As requested by EPA, Peco stands ready to provide documentation necessary to support its conclusions on the approximate quantity of ammonia released during the May 11/May 12 event. Peco is also eager to cooperate with EPA to provide any additional information that might assist EPA's review of the facts and circumstances surrounding this release event. While the exact amount of ammonia released during this event may prove to be difficult to quantify, Peco's notification to relevant authorities occurred "immediately" – within fifteen minutes of the first time that any Peco employee knew or had reason to know that the release event may have involved a reportable quantity. Accordingly, Peco believes that the alleged violations in this matter do not warrant enforcement actions by EPA.

Sincerely yours,

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC



John A. Brunini



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 20 2012

SETTLEMENT CONFIDENTIAL

UNITED PARCEL SERVICE

Mr. John A. Brunini, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201

Re: Peco Foods, Inc., Bay Springs, Mississippi Facility
Summary of Show Cause Meeting

Dear Mr. Brunini:

As a follow-up to our show cause meeting on July 17, 2012, the Environmental Protection Agency (EPA) is providing you with a summary of the meeting and a list of action items. Based on the information gathered concerning the accidental release of ammonia greater than the reportable quantity (RQ) that occurred on May 12, 2012, the EPA has identified the following violations:

1. CERCLA Section 103(a), 42 U.S.C. § 9603 - Failure to immediately notify the National Response Center (NRC) after an RQ of ammonia was released on May 12, 2012.
2. EPCRA Section 304(a), 42 U.S.C. § 11004 - Failure to immediately notify the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC), after an RQ of ammonia was released on May 12, 2012.

After careful consideration of the information discussed in the show cause meeting, EPA calculated a maximum penalty of \$53,100 (rounded to nearest \$100). For settlement purposes only, EPA reduced this to \$34,515 (additional 35% reduction) based on Peco Foods, Inc.'s attitude and cooperation and agreeing to settle within 90 days of the July 17, 2012, Show Cause meeting.

At this time, Peco Foods, Inc., has four options for proceeding in this enforcement matter. The four options are:

Option #1 - Full Payment of Penalties

Sign a Consent Agreement and Final Order (CAFO) in this matter within 90 days of the July 17, 2012, meeting, and pay the entire final penalty of thirty four thousand five

hundred fifteen dollars (\$34,515) to the Treasurer of the United States of America. Payment would be due within 30 days after the effective date of the CAFO.

Option #2 - Supplemental Environmental Project (SEP)

Perform a SEP which can be used to mitigate up to 75 percent (%) of the final penalty in the amount of \$8,629 and paying a minimum of 25% (\$25,886) to the U.S. Treasury. Please note that a Pollution Prevention SEP is the only SEP type that receives 100% (dollar for dollar) credit. For all other categories of SEPs, Peco Foods, Inc., can receive up to 80% (\$0.80 on the dollar) credit. Therefore, unless Peco Foods, Inc., chooses a Pollution Prevention SEP, Peco Foods, Inc., must spend a minimum of \$32,358 (\$25,886/.80).

If the proposed SEP is an Emergency Planning and Preparedness SEP, which involves the purchase and donation of equipment or supplies to a local agency (fire department, Emergency Management Agency (EMA), and LEPC), or the SERC, Peco Foods, Inc., must agree to the following language in the CAFO.

“Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.”

Peco Foods, Inc., must also have the intended recipient of the proposed SEP (e.g. fire department, EMA, LEPC, and SERC) certify under affidavit to the following language and submit the certification to EPA along with the SEP proposal:

“Recipient certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.”

The SEP proposal cannot be considered for approval without submission of the Recipient’s certification to EPA, along with the SEP proposal.

The SEP must be completed in its entirety within 45 days of receipt of the executed CAFO, unless otherwise noted.

Option #3 - Request a Hearing

If Peco Foods, Inc., decides not to settle, and if EPA files an administrative complaint, Peco Foods, Inc., may request a hearing before an Administrative Law Judge. In this situation, EPA would not be bound by the penalty proposed in this letter, and may seek the maximum penalty thereby eliminating any downward adjustments discussed during the show cause meeting.

Option #4 - Claim Inability to Pay

Claim an inability to pay the penalty. This requires submission of a variety of financial documents to substantiate the inability to pay the proposed penalty. Please refer to Section VIII (A) of the September 30, 1999, Emergency Planning and Community Right-to-Know Act, Emergency Response Policy.

If you choose Option #2, Perform a SEP, we have developed a time-line for submittal of your SEP proposal. The time-line is outlined below.

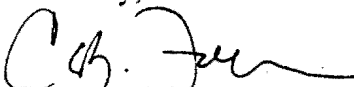
Projected Schedule	
Document	Due Date
Selected option for settlement from 4 above choices	September 5, 2012
Submit a SEP proposal (including costs and time-frame for SEP completion) to EPA for review and approval, along with the completed SEP certification affidavit.	September 19, 2012

As stated above, EPA has offered conditional adjustments (e.g. penalty reductions) as an incentive to continued cooperation and expeditious settlement in this matter. To receive the full benefit of these adjustments, your continued cooperation is required throughout the entire enforcement process. If EPA at any time determines the company's future cooperation and responsiveness in this matter to be contrary to what was displayed during our initial negotiations or impedes closure of this matter, EPA retains its discretionary rights to rescind the settlement offer in its entirety or any portion thereof. While this is not our desired objective, in the event settlement adjustments are rescinded, EPA will immediately inform you of such decision.

For this document, the settlement confidentiality claim is made in accordance with the Federal Rules of Evidence, Rule 408.

We look forward to your response regarding your selected option for settlement of this matter by September 5, 2012. If you have questions please call Mr. Robert Bookman at (404) 562-9169 or Mr. Karl Wilson at (404) 562-9295.

Sincerely,



Caron B. Falconer
Section Chief
EPCRA Enforcement Section

SUMMARY OF EPCRA VIOLATIONS AND PROPOSED PENALTY

I. Name and Address: Peco Foods
95 Commerce Drive
Bay Springs, Mississippi 39422

II. Penalty Calculation Table

Statute	Chemical	Quantity Pounds	RQ	Date/Hour Late	Matrix Cell	Maximum Penalty	Proposed Penalty
CERCLA § 103	Anhydrous Ammonia	> RQ	100	5/12/12 > 1 hour	2B	\$17,710	\$17,710
EPCRA § 304(a)	Anhydrous Ammonia	> RQ	100	5/12/12 > 1 hour	2B	\$35,420 (\$17,710 X 2RL)	\$35,420
Totals						\$53,130	\$53,130
Base penalty (rounded to nearest \$100)							\$53,100
Cooperation (Good Attitude) -25%							\$13,275
Willingness Settle in 90 Days -10%							\$5,310
Total Adjustments							\$18,585
Final Penalty							\$34,515

III. SEP Option

Minimum U.S. Treasury (25%): \$8,629

Minimum Penalty to SEP (75%): \$25,886

Penalty to SEP @ (80c/\$1): \$32,358

BRUNINI

ATTORNEYS AT LAW

John A. Brunini

E-mail: jbrunini@brunini.com
Direct: 601.973.8712

The Pinnacle Building, Suite 100 Post Office Drawer 119

190 East Capitol Street
Jackson, Mississippi 39201
Telephone: 601.948.3101

Jackson, Mississippi 39205
Facsimile: 601.960.6902

July 17, 2012

Karl D. Wilson
EPCRA Enforcement Section
Air, Pesticides & Toxics Management Division
United States Environmental Protection Agency Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

RE: Peco Foods, Inc. Response to EPA Notice of Violation dated June 8, 2012
Bay Springs, Mississippi Facility

Dear Mr. Wilson:

As you know, Peco Foods, Inc.'s ("Peco") Bay Springs, Mississippi facility experienced an ammonia release event on the night of May 11, 2012 and early morning hours of May 12, 2012. Although Peco was not immediately aware of the source of the release, it occurred inside a blast freezer after a fan blade broke loose from its hub and struck (and pierced) a nearby evaporator coil in the freezer. Without knowing whether for certain whether the release involved a release of a reportable quantity of ammonia into the environment, Peco nevertheless reported this event to local, state and federal authorities at approximately 12:30am on May 12. Peco provided a written follow-up notification to local and state authorities on May 16, 2012. On May 23, 2012, Peco provided a "Detailed Incident Report" to Mr. Lawrence Fincher of EPA. The purpose of this incident report was to provide a specific description of the events and circumstances leading up to, during, and after the May 11 release event. On June 8, 2012, EPA issued a Notice of Violation to Peco, alleging that Peco had not timely notified local, state, or federal authorities of the May 11 release event and had not provided written follow-up notification to local and state authorities regarding the event.

Peco respectfully disagrees with the allegations contained in the June 8, 2012 Notice of Violation and looks forward to providing EPA all information and documentation necessary to resolve this Notice of Violation. Specifically, as detailed in Section I. below, Peco contends that, under the circumstances involved on May 11 and May 12, it made immediate notification to local, state, and federal authorities as required by applicable statutes and regulations. Peco also made proper written follow-up notification to local and state authorities on May 16, 2012. Finally, after a thorough investigation of the incident by FC&E Engineering, Inc., Peco is unable

to determine to any reasonable degree of scientific certainty whether the release event involved a reportable quantity. The uncertainty in quantifying this release arises as a result of a number of variables that are described in more detail in Section II., below.

Section I. Peco Provided Immediate Notification to Local, State, and Federal Authorities

As stated in Peco's Detailed Incident Report, submitted to Mr. Lawrence Fincher of EPA on May 23, 2012, Mr. Darrell Butler noticed a faint ammonia odor at approximately 11:10pm near the blast freezer unloading area. By 11:30pm, the faint ammonia odor was still present but its source had not been identified. In order to protect the health and safety of plant employees, Peco management ordered evacuation of the facility until the source of the release could be identified. At that time, the ammonia odor was still very light. Refrigeration Manager Kevin Scott ordered a re-start of the refrigeration system that had powered down so that the source of the faint ammonia odor could be identified.

At this time, because of the faint nature of the ammonia odor present, Peco personnel did not believe that the release to be a reportable event. After searching five different blast freezers for the source of the release, Kevin Scott opened the door to Blast Freezer #1 at approximately 12:30am. Immediately upon opening the door to Blast Freezer #1, Scott recognized a very strong ammonia odor inside and quickly closed the door. Only then did Scott determine, based on the strength of the odor within Blast Freezer #1, that the release inside the freezer was significant and warranted reporting. In order to stop the release immediately, Kevin Scott first initiated the necessary actions to close valves to each of the three evaporator coils inside Blast Freezer #1. Kevin Scott completed these actions at approximately 12:35am and then briefed Peco management on the source and significance of the release. Peco management initiated notification of local, state, and federal authorities at approximately 12:45am, very shortly after the briefing with Kevin Scott.

Until the moment that Kevin Scott opened Blast Freezer #1 at approximately 12:30am, Peco personnel believed the release of ammonia to be a minor event. Upon opening Blast Freezer #1, Kevin Scott took an appropriate action first – he initiated actions necessary to valve off Blast Freezer #1 and stop the flow of ammonia to it. Immediately thereafter, Scott briefed Peco management of the potential significance of the event. Applicable regulations require that notification of reportable releases occur "immediately" after any person knows or has reason to know of a reportable release. Peco complied with this immediate notification requirement. Within fifteen minutes of the first moment that Kevin Scott determined the nature of the release event, Peco made appropriate notifications to local, state, and federal authorities. Again, these notifications **occurred within fifteen minutes of the first time that any Peco representative had reason to believe that the event may have involved the release of a reportable quantity.** Peco's prompt reporting in this matter is consistent with EPA's EPCRA and CERCLA enforcement policies and does not warrant further enforcement action.

Section II. Peco is Unable to Determine With Scientific Certainty Whether the Release Event Involved a Reportable Quantity

As stated in Peco's May 23, 2012 Detailed Incident Report, Peco contracted Refrigeration Systems International, Inc. ("RSI") to prepare a calculation of the quantity of ammonia released during the May 11/May 12 event. RSI (without making a site visit) made an initial calculation based on a set of assumptions regarding diameter of the hole in the evaporator coil, the temperature within the freezer, the gauge pressure, absolute pressure, leak rate, and leak duration. We know for certain that nearly all of RSI's assumptions were incorrect and that its conclusion regarding the quantity of the release was incorrect.

Within four days after the event, Peco contracted FC&E to conduct a thorough investigation of the release event and prepare accurate release calculations. FC&E has completed its investigation and determined that the release event involved a release of between 85 and 285 pounds of ammonia. Due to a number of complex variables at play during the release event, it is not possible to demonstrate to any reasonable degree of scientific certainty that the release event definitely exceeded (or did not exceed) the reportable quantity of 100 pounds. As stated, the release event occurred initially within a Blast Freezer that maintains temperatures in the range of -40 degrees Fahrenheit. To maintain such temperatures, the freezer is sealed, but that seal is not impenetrable to an active and volatile gas like ammonia.

In order to determine the quantity of ammonia released, FC&E had to evaluate the release in phases. The first phase of the release involved the piercing of the evaporator coil and the flow of ammonia through the hole in the coil while the system was still under pressure. During this phase, the system maintained vacuum and very little, if any, ammonia was lost. The second phase of the release occurred when the system lost vacuum. For approximately 55 minutes, the system lost vacuum and ammonia released into the Blast Freezer. The third phase of the release occurred when system vacuum was restored and stopped the release of ammonia into the freezer. The fourth phase of the release occurred after the flow of ammonia to Blast Freezer #1 had been valved off. The fifth phase of the release occurred when Blast Freezer #1 experienced a slow leak of ammonia through its sealed edges. The sixth and final phase of the release occurred during Peco's ventilation of Blast Freezer #1 through a water spray.

Through a set of complex formulae and mathematical equations, FC&E calculated the amount of ammonia within the freezer through the fourth phase of the release (valving off of Blast Freezer #1). FC&E then calculated the amount of ammonia lost through leakage around the freezer's seal and the amount of ammonia lost during the controlled ventilation event. Because we cannot confirm with precision the state of the ammonia as it flowed through the hole in the evaporator coil, it is not possible to determine how much ammonia was absorbed in the items located in the freezer, including approximately 145,000 pounds of chicken product (which consists of over 50% water), frost and ice on the walls and product packaging, and the packaging itself. Assuming a high rate of absorption in these items and a high rate of ammonia capture during the controlled release event, FC&E arrived at a total released quantity of 85 pounds. A

high rate of absorption (and lower released quantity) is consistent with available anecdotal evidence. Such evidence includes eyewitness confirmations of the existence of only a very light ammonia odor around the freezer and during the controlled release and an ammonia odor on chicken product and packaging that was discarded after the event. If low absorption rates on product, packaging, ice and frost are assumed (although such is not consistent with anecdotal evidence), FC&E arrived at a total released quantity of approximately 285 pounds.

FC&E has advised that due to the unique set of variables involved in this release incident, it is not possible to conclude, based on any degree of scientific certainty, that the release event exceeded (or did not exceed) the 100 pound reportable quantity threshold. The only possible way to achieve some potential certainty would involve a controlled recreation of the event inside a test cell with similar characteristics and similar quantities of product and packaging. Such a test would potentially be dangerous, cost prohibitive, and likely be affected by unforeseen variables that might render it inaccurate. Accordingly, Peco has not initiated such testing.

As requested by EPA, Peco stands ready to provide documentation necessary to support its conclusions on the approximate quantity of ammonia released during the May 11/May 12 event. Peco is also eager to cooperate with EPA to provide any additional information that might assist EPA's review of the facts and circumstances surrounding this release event. While the exact amount of ammonia released during this event may prove to be difficult to quantify, Peco's notification to relevant authorities occurred "immediately" – within fifteen minutes of the first time that any Peco employee knew or had reason to know that the release event may have involved a reportable quantity. Accordingly, Peco believes that the alleged violations in this matter do not warrant enforcement actions by EPA.

Sincerely yours,

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC

John A. Brunini



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-9960

JUN 08 2012

UNITED PARCEL SERVICE

Mr. Ronnie Tolbert
Peco Foods
95 Commerce Drive
Bay Springs, Mississippi 39422

RE: Peco Foods
Notice of Violation and Opportunity to Show Cause

Dear Mr. Tolbert:

Based on information from the National Response Center (NRC) and a follow-up investigation, it is alleged that your company is in violation of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a) and Sections 304(a) and 304(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11004, and the regulations promulgated at 40 C.F.R. § 302.6 and 40 C.F.R. Part 355, Subpart C, respectively.

Such violations are subject to an enforcement action pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045 which provides for the administrative assessment of penalties, and/or the initiation of civil action. EPA is offering Peco Foods the opportunity to meet with EPA to present any factual information or other evidence relative to this matter. Therefore, we request that you be present at the U.S. Environmental Protection Agency (EPA), Sam Nunn Atlanta Federal Center (SNAFC), 61 Forsyth Street, S.W., Atlanta, Georgia 30303, on July 17, 2012, at 10:30 a.m., to show cause why this Agency should not refer the matter to the U.S. Attorney for initiation of civil proceedings or institute administrative proceedings to assess civil penalties. You should allow adequate time to reach the SNAFC 9th floor reception area from the parking lot. An estimated 30 minutes is recommended. Enclosed is a listing of the violations which have been identified at your company's facility, along with a copy of the EPA EPCRA Enforcement Response Policy. You should be prepared to provide all relevant information with documentation pertaining to the alleged violations. You have the right to be represented by legal counsel.

To arrange the particulars of this meeting, please contact Mr. Karl Wilson at (404) 562-9295.

Sincerely,

Caron B. Falconer
Chief

EPCRA Enforcement Section

Enclosure

VIOLATIONS

Section Violated

Nature of Violation

CERCLA 103(a)

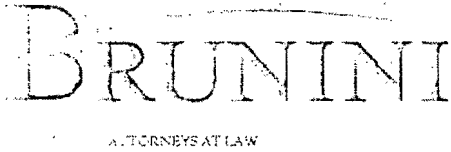
Failure to immediately notify the National Response Center after a reportable quantity (RQ) of ammonia was released from your facility located at 95 Commerce Drive, Bay Springs, Mississippi on May 12, 2012.

EPCRA Section 304(a)

Failure to immediately notify the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) after a RQ of ammonia was released from your facility located at 95 Commerce Drive, Bay Springs, Mississippi on May 12, 2012.

EPCRA Section 304(c)

Failure to timely submit a written follow-up emergency notice to the SERC and the LEPC after a RQ of ammonia was released at your facility located at 95 Commerce Drive, Bay Springs, Mississippi on May 12, 2012.



John A. Brunini

E-mail: jbrunini@brunini.com
Direct: 601.973.8712

The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201
Telephone: 601.948.3101

Post Office Drawer 119
Jackson, Mississippi 39205
Facsimile: 601.960.6902

May 23, 2012

VIA EMAIL AND REGULAR U.S. MAIL

Mr. Lawrence Fincher
EPCRA Compliance Inspector
U.S. EPA, Region IV
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

RE: Peco Foods, Inc. Bay Spring, Mississippi Ammonia Release - Detailed Incident Report

Dear Mr. Fincher:

Our law firm represents Peco Foods, Inc ("Peco"). Shortly before midnight on May 11, 2012, shift management at Peco's Bay Springs facility noticed an ammonia odor in the blast freezer unloading area of the facility. At that time, the source of the ammonia odor was unknown. Peco instituted immediate action to ensure employee safety and began searching for the source of the ammonia odor. After midnight, Peco made a determination that the release incident might have involved a reportable quantity of ammonia and therefore initiated notification procedures. In accordance with federal law, Peco notified the proper local, state, and federal authorities of the release event. Since that time, Peco has also provided written follow-up notification to local and state authorities as required by law.

The purpose of this letter is to provide EPA Region IV with a detailed report outlining the names of the persons involved in Peco's response to the ammonia release event and the time and purpose of relevant actions taken during and after the release event. The following section of this letter provides that detailed information. The final section of this letter addresses the quantity of ammonia released during this event. Refrigeration Systems International, Inc. ("RSI") prepared initial release calculations without making a site visit and based on certain assumptions that we now know to be incorrect. Accordingly, the actual quantity of ammonia released was significantly less than documented in the RSI calculations. Peco has engaged FC&E Engineering, Inc. ("FC&E") to review the RSI calculations and the facts and circumstances involved in the release event and prepare a detailed report with accurate calculations reflecting the actual circumstances of the event. Once that report is complete, we will submit the calculations and supporting documentation to you.

I. Peco Foods, Inc. Bay Springs Facility Ammonia Release - Timeline of Events

Saturday, May 11, 2012

- 10:25pm - Refrigeration system shows signs of impending shutdown due to drawing of air into closed system.
- 11:10pm - On site management (Darrel Butler) determines existence of light ammonia odor and notifies on-site maintenance supervision.
- 11:15pm - Offsite refrigeration management (Kevin Scott) notified of ammonia odor and refrigeration system issues.
- 11:30pm - Kevin Scott orders re-start of portions of refrigeration system that had powered down.
- 11:30pm - Plant management orders evacuation of facility employees until source of ammonia odor can be identified.
- 11:45pm - Kevin Scott begins search for source of ammonia odor in blast unloading area.

Sunday, May 12, 2012

- 12:30am - Kevin Scott identifies source of ammonia in Blast Freezer #1.
- 12:35am - Kevin Scott finalizes effort to valve off flow of ammonia to all three evaporator coils in Blast Freezer #1.
- 12:45am - Notification to local, state and federal authorities.
- 1:00am - Door to Blast Freezer #1 sealed with wet towels to preclude escape of fugitive ammonia from Blast Freezer #1.
- 1:10am - Begin unloading of shipping area around Blast Freezer #1.
- 2:20am - Incident command team meeting conducted to develop plan for removal of ammonia from Blast Freezer #1.
- 3:30am - Kevin Scott begins cutting breach in outside wall of facility and through back wall of Blast Freezer #1 in order to draw air and ammonia gas through water fogging system and absorb gaseous ammonia.
- 5:00am - Placement of dirt berm at end of ditch row to contain runoff from water fogger activity.
- Between 9am and 10am - On-site maintenance team pumps all collected runoff from water fogging operation into drums.
- Between 1pm and 2pm - Water fogging operation deemed complete.

II. Peco Foods, Inc. Bay Springs Facility Ammonia Release - Calculations of Quantity Released

Initially, Peco engaged RSI to prepare estimated calculations of the quantity of ammonia released during the May 11/May 12, 2012 release event. Those calculations, which we have previously submitted to you by email, indicate a release of 1,168 pounds of ammonia gas during

this event. As stated when we submitted this information to you by email, we believe that certain errors in these calculations render them inaccurate and significantly overestimated. As stated above, Peco has engaged FC&E to conduct a thorough investigation of the release event and prepare an independent, accurate calculation of the quantity of ammonia gas released.

Presently, Peco is aware of several reasons why the RSI calculations are inaccurate. RSI utilized a formula to determine the rate of ammonia gas flow through the breach in the evaporator coil. That formula requires the input of accurate data for several variables, including the area of the breach or hole (in square inches); the temperature at the breach during the release; the gauge pressure during the release event; the absolute pressure during the release event; and the duration (in minutes) of the release. For each of these variables, RSI utilized inaccurate data. For instance, RSI used .75 inches as the average diameter of the breach. The actual diameter, when precisely measured with a caliper measuring tool, is approximately half of the diameter figure utilized by RSI. Accordingly, the area (in square inches) is roughly one-fourth of the figure used by RSI in its release calculations. This variable alone creates a dramatic change in the release calculations. In addition, the RSI estimate of temperature, gauge pressure, absolute pressure, and duration of the release¹ were all incorrect and resulted in further inaccuracy and overestimation of the quantity of ammonia released during the event. Once FC&E completes its investigation and report, we will provide you with documentation supporting a fully detailed and accurate calculation of the quantity of ammonia released through the breach in the evaporator coil during this event.

Further compounding the errors in RSI's calculations, RSI assumed that all ammonia gas released through the breach in the evaporator coil escaped into the environment. We know this assumption is incorrect. In fact, Blast Freezer #1 customarily maintains a temperature approaching -40 degrees Fahrenheit. In order to achieve and maintain such low temperatures, this blast freezer is sealed. When the evaporator coil was breached, ammonia gas released into the freezer, but only a fraction of that ammonia gas escaped from the freezer into the surrounding area of the plant facility. This fact is supported by the first-hand accounts of employees noticing a slight ammonia odor around Blast Freezer #1 and a very strong ammonia odor within Blast Freezer #1 when its door was partially opened and then immediately closed during the process of checking blast freezers for the source of the ammonia release.

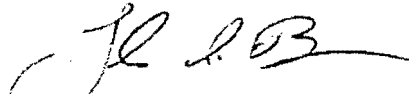
Once the ammonia release was determined to be within Blast Freezer #1, wet towels were placed along all edges of the freezer in order to absorb and prevent emission of any additional ammonia gas from Blast Freezer #1. In order to safely remove the ammonia gas from the freezer, Peco developed a system to divert all gas from the freezer through a water fogger. Peco also captured all runoff from the water fogging activities and pumped all collected runoff into drums. Accordingly, a very large portion of the ammonia gas was captured in a way that prevented its release into the environment. Part of FC&E Engineering's task in this matter is to

¹ With regard to the duration of the release, the characteristics of the refrigeration system in question indicate that it can only leak ammonia gas when under positive pressure. Presently, we estimate the total time that the system was in positive pressure at approximately 45 minutes. This variable also differs very significantly from RSI's estimate of 120 minutes. Peco is aware of similar facts that indicate RSI's estimated gauge pressure, absolute pressure, and temperature were all also inaccurate and lead to a significantly overestimated calculation of the quantity of ammonia gas released through the breach in the evaporator coil.

develop a supportable determination of the amount of ammonia gas that actually escaped into the environment (in addition to determining how much ammonia gas released through the breach in the evaporator coil into Blast Freezer #1). Once FC&E completes its investigation and report, we will provide detailed calculations of the quantity of ammonia released together with supporting documentation. Once that information is provided to you, we can provide additional information as needed or requested by EPA.

Sincerely yours,

BRUNINI, GRANTHAM, GROWER & HEWES, PLLC



John A. Brunini

cc: Mr. Steve Conley
Mr. Bart Crater



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

UNITED PARCEL SERVICE

John A. Brunini, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, Mississippi 39201

Re: Request for Information Pursuant to Section 104(e) of CERCLA for Peco Foods, Inc.,
Bay Springs Processing Plant, Bay Springs, Mississippi

Dear Mr. Brunini:

On May 12, 2012, the Peco Foods, Inc., Bay Springs Processing Plant (Peco Foods) notified the National Response Center that a release of anhydrous ammonia had occurred at the Bay Springs Processing Plant, located in Bay Springs, Mississippi. The Environmental Protection Agency has determined that it needs additional information from Peco Foods to determine compliance with the Release Notification Regulations under the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Pursuant to the authority of Section 104 of CERCLA, 42 U.S.C. § 9604, as amended, you are hereby requested to respond to the enclosed Information Request.

Compliance with the Information Request is mandatory. Failure to respond fully and truthfully to the Information Request within fifteen (15) days of receipt of this letter, or to adequately justify such failure to respond, can result in enforcement action by EPA pursuant to Section 104(e) of CERCLA, as amended. This statute permits the EPA to seek the imposition of penalties of up to \$37,500 per day of noncompliance.

You are entitled to assert a claim of business confidentiality covering all or part of any required information, in the manner described at 40 C.F.R. § 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth at 40 C.F.R. Part 2, Subpart B. Unless a confidentiality claim is asserted at the time the required information is provided, the EPA may make this information available to the public without further notice to you.

Your response to this Information Request should be mailed to:

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303.

Upon receipt of the information, EPA will complete its review and subsequently make a determination of whether Peco Foods has violated Section 103 of the CERCLA (42 U.S.C. § 9603) and the regulations promulgated at 40 C.F.R. Part 302.6.

If you have any legal or technical questions relating to this Information Request, you may consult with the EPA prior to the time specified above. Please direct legal questions to Lynda Crum of the Office of Regional Counsel at (404) 562-9524. Technical questions should be directed to Karl Wilson, at the above address, or at (404) 562-9295.

Thank you for your cooperation in this matter.

Sincerely,

Teresa Mann
Attorney Advisor
Office of Environmental Accountability

Enclosure

INFORMATION REQUEST

DEFINITIONS

1. As used herein, the terms "the Company" or "your Company" refer not only to your Company as it is currently named and constituted, but also to all predecessors in interest of your Company and subsidiaries, divisions and branches of your Company.
2. The terms "you" shall include any officers, managers, employees, contractors, trustees, successors, assignees, and agents of your Company.
3. The terms "document" and "documents" include any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control, or known by you to exist, including originals, all prior drafts, and all non-identical copies.
4. As used herein, the terms "release", "facility" and "person" shall have the meanings set forth in Sections 101(22), (9) and (21) of CERCLA, 42 U.S.C. § 9601(22), (9) and (21), respectively.
5. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, in which case the statutory definitions shall apply.

INSTRUCTIONS

1. Identify each answer with the number of the question. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the question to which it applies.
2. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. Consult with all present and past employees and agents of your Company whom you have reason to believe may be familiar with the matter to which the question pertains.
3. If additional information or documents responsive to this Request becomes known or available to you after you respond to this Request, EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement your response to EPA.
4. If anything is omitted from a document produced in response to the Information Request, state the reason for, and the subject matter of, the omission.
5. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.
6. To make a confidentiality claim, please stamp, or type, "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified.

INFORMATION REQUESTED

Please provide the following:

1. Written copy of the company's Emergency Response Plan detailing evacuation procedures and requirements, initial actions, emergency contacts, and required training.
2. The basis for your conclusion, including calculations, that 85 to 285 pounds of anhydrous ammonia was released on May 11, 2012.
3. A schematic and diagram of the facility, including the blast freezer and unloading area in question, along with the property boundary.
4. Digital control system printouts (time stamped) showing the flow of ammonia in the system along with pressure readings from 8:00 PM CST, May 11, 2012 to 8:00 AM CST, May 12, 2012.
5. Photographs of the evaporator coil, especially showing the diameter of the breach (juxtaposed to a ruler measurement) connected to Blast Freezer #1.
6. Exact location of break where release occurred in the evaporator coil.
7. An explanation detailing what caused the break where the release occurred.
8. Photographs showing where Blast Freezer #1 was compromised to divert flow of ammonia gas to develop a water fogging system (i.e. fan, water spray equipment, catch basin/sump).
9. Quantity of run-off accumulated from the water fogging system.
10. The purpose and necessity for placing wet towels around the freezer door during the release event.
11. The time in which the towels were placed around the freezer door.
12. Photographs of the exact location where the wet towels were placed.
13. The location of ammonia piping and the location and capacity of ventilation system(s) associated with and in relationship to the blast freezers.
14. A schematic and flow diagram of the ammonia refrigeration system in relationship to the blast freezers.
15. Pictures and a flow diagram showing all ammonia piping and valves in the blast freezer area.
16. An explanation detailing whether the ammonia refrigeration piping is located internal or external of the blast freezer's interior.
17. The past 24 months of maintenance and preventive maintenance records for the entire ammonia refrigeration system.

18. Specific details including exact dimensions on the freezer door, seals, structure, etc.
19. Photographs of the freezer door (including seals).
20. Photographs of the blast freezer doors in relationship to the staging area and loading dock, and related structures.
21. Photographs of and describe egress and ingress curtains used in association with the staging area and loading area where blast freezers are located.
22. An explanation detailing if the blast freezers were located in an airtight building or room at the time of the release.
23. An explanation detailing if ammonia alarms or sensors were activated during the release? If yes, what were the ppm readings and when were the readings taken?
24. The ppm settings on all alarms and sensors located in the area of the blast freezers.
25. The ammonia quantity released to the environment during the accidental release event.
26. The duration of the ammonia release event according to observers and according to data from the Digital Control System.
27. The time in which the evacuation of the facility began and ended.



FIRST ON ANY MENU.sm

Mr. Mike Lucas
Director
Jasper County Emergency Management Agency
Post Office Box 1106
Bay Springs, Mississippi 39422
Facsimile # (601) 764-2035

Processing Facility
P.O. Box 1905
95 Commerce Dr.
Bay Springs, MS 39422
Phone: 601.764.4392

Mr. Brian Mask
Hazard Manager
Mississippi Emergency Management Agency
Post Office Box 5644
Pearl, Mississippi 39288-5644
Facsimile # (601) 933-6815

May 16, 2012

Re: Written Notification of Ammonia Release at Peco Foods, Inc. Bay Springs Facility

Dear Mr. Lucas and Mr. Mask:

Shortly before midnight on May 11, 2012 shift management at Peco Foods, Inc.'s Bay Springs facility noticed an ammonia odor in a specific area of the facility. At that time, the source of the ammonia odor was unknown, but out of an abundance of caution, plant management initiated evacuation procedures at the facility. After midnight on May 12, 2012, Peco Foods personnel identified the source of the ammonia release - a damaged evaporator coil in a blast freezer. Based on immediate evaluation of the damaged evaporator coil, the plant manager initiated the process of emergency notification to the Jasper County Emergency Management Agency, the Mississippi Emergency Management Agency, and that National Response Center. At that time, Peco Foods management could only estimate the quantity of the ammonia release by guesswork. However, out of an abundance of caution, Peco Foods implemented its emergency notification procedures.

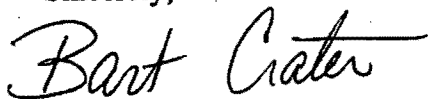
After valving off ammonia delivery to the damaged evaporator coil in the blast freezer, Peco Foods engaged a contractor to remove air from the system prior to restarting it. The damaged evaporator coil has been taken out of service and will be replaced. Peco Foods also contracted with Refrigeration Systems International, Inc. to make an initial determination of the quantity of ammonia released. According to that initial estimate, 1,168 pounds of ammonia was released during this incident. However, Peco Foods has reason to believe the actual release of ammonia may have been less than 1,168 pounds and has engaged an engineering firm to assist it

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with a more detailed analysis of the damaged evaporator coil and the release event. We anticipate receiving from this engineering firm a more accurate estimate of the quantity of ammonia released during the incident.

The purpose of this letter is to provide you with written follow-up notification of the release event that occurred beginning shortly before midnight on May 11, 2012. Once our investigation of this incident is complete, we will supplement this follow-up written notification as necessary. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Bart Crater". The signature is written in black ink and is positioned below the word "Sincerely,".

Bart Crater
Complex Human Resources Director

TRANSMISSION VERIFICATION REPORT

TIME : 05/16/2012 16:01
NAME : PECO ACCOUNTING
FAX : 6016709319
TEL : 6017644392
SER. # : C9J133307

DATE, TIME	05/16 16:00
FAX NO. /NAME	96017642035
DURATION	00:00:37
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM



FIRST ON ANY MENUSM

Mr. Mike Lucas
Director
Jasper County Emergency Management Agency
Post Office Box 1106
Bay Springs, Mississippi 39422
Facsimile # (601) 764-2035

Mr. Brian Mask
Hazard Manager
Mississippi Emergency Management Agency
Post Office Box 5644
Pearl, Mississippi 39288-5644
Facsimile # (601) 933-6815

May 16, 2012

Re: Written Notification of Ammonia Release at Peco Foods, Inc. Bay Springs
Facility

Dear Mr. Lucas and Mr. Mask:

Shortly before midnight on May 11, 2012 shift management at Peco Foods, Inc.'s Bay Springs facility noticed an ammonia odor in a specific area of the facility. At that time, the source of the ammonia odor was unknown, but out of an abundance of caution, plant management initiated evacuation procedures at the facility. After midnight on May 12, 2012, Peco Foods personnel identified the source of the ammonia release - a damaged evaporator coil

Processing Facility
P.O. Box 1905
95 Commerce Dr.
Bay Springs, MS 39422
Phone: 601.764.4392

TRANSMISSION VERIFICATION REPORT

TIME : 05/16/2012 15:51
NAME : PECO ACCOUNTING
FAX : 6016709319
TEL : 6017644392
SER.# : C9J133307

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

05/16 15:51
916019336815--9559
00:00:33
02
OK
STANDARD
ECM



FIRST ON ANY MENUSM

Mr. Mike Lucas
Director
Jasper County Emergency Management Agency
Post Office Box 1106
Bay Springs, Mississippi 39422
Facsimile # (601) 764-2035

Mr. Brian Mask
Hazard Manager
Mississippi Emergency Management Agency
Post Office Box 5644
Pearl, Mississippi 39288-5644
Facsimile # (601) 933-6815

May 16, 2012

Re: Written Notification of Ammonia Release at Peco Foods, Inc. Bay Springs Facility

Dear Mr. Lucas and Mr. Mask:

Shortly before midnight on May 11, 2012 shift management at Peco Foods, Inc.'s Bay Springs facility noticed an ammonia odor in a specific area of the facility. At that time, the source of the ammonia odor was unknown, but out of an abundance of caution, plant management initiated evacuation procedures at the facility. After midnight on May 12, 2012, Peco Foods personnel identified the source of the ammonia release - a damaged evaporator coil

Processing Facility
P.O. Box 1905
95 Commerce Dr.
Bay Springs, MS 39422
Phone: 601.784.4392



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 16 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Brunini
Brunini, Grantham, Grower & Hewes, PLLC
190 East Capitol Street, Suite 100
The Pinnacle Building
Jackson, Mississippi 39201

Re: Peco Foods, Inc., Bay Springs, MS.
Consent Agreement and Final Order
Docket Number EPCRA-04-2013-2023(b)

Dear Mr. Brunini:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2013-2023(b)) involving Peco Foods, Inc., Bay Springs, Mississippi. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you or your client have any questions with regards to the SEC's environmental disclosure requirements, please refer to the contact phone number at the bottom of the SEC Notice

If you have any questions, please call Mr. Karl Wilson at (404) 562-9295.

Sincerely,

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Peco Foods, Inc.

Respondent.

)
)
) Docket Number: EPCRA-04-2013-2023(b)
)
)

HEARING CLERK

2013 JUL 16 PM 3:22

RECEIVED
EPA REGION IV

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Peco Foods, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004 and July 8, 2010; and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Peco Foods, Inc., is a corporation doing business in the State of Mississippi.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 95 Commerce Drive, Bay Springs, Mississippi 39422.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (RQ).

11. Respondent was in charge of the facility on May 11, 2012.

12. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

13. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violation of Section 304(a) of EPCRA

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

17. Respondent was the owner or operator of the facility on May 11, 2012.

18. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as described in Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

19. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

20. On May 11, 2012, Respondent had a release of ammonia above the RQ at the facility.

21. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

IV. Consent Agreement

29. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

30. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

31. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

32. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

33. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

34. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

35. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

V. Final Order

36. Respondent shall pay a civil penalty of SEVEN HUNDRED FORTY NINE DOLLARS (\$749) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

37. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental
Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
U.S. Government Lockbox 979076
EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

38. Respondent shall pay a civil penalty of ONE THOUSAND FOUR HUNDRED NINETY SIX DOLLARS (\$1,496) for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

39. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

40. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

41. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

42. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Cash donations shall not be used to satisfy the terms and conditions of this CAFO. Peco Foods, Inc., shall expend not less than EIGHT THOUSAND DOLLARS (\$8,000) to purchase the following for the Bay Springs Fire Department:

- 2 Self-Contained Breathing Apparatuses, Z7-3-03-02-00-02-B,
2215 LO Kevlar Harness, LP 30 Carbon, Medium Air Switch Device, Voice
Amplification System, Pass Buddy Breather

This CAFO shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

43. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

44. Respondent has obtained and presented to EPA a separate written certification from the recipient of the SEP, the Bay Springs Fire Department, that it is not a party to any open federal financial assistance transaction as stated in Paragraph 43.

45. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

46. No later than seventy five (75) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Karl Wilson at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of EIGHT THOUSAND DOLLARS (\$8,000), or greater, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 42.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

47. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

48. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act."

49. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 42. If Respondent fails to timely and fully complete any part of the Emergency Planning and Preparedness SEP in Paragraph 42, including failure to spend the minimum amount of EIGHT THOUSAND DOLLARS (\$8,000), Respondent shall be liable for a stipulated penalty in the amount of the difference between \$8,000 and the actual amount spent. For purposes of this paragraph, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

50. For purposes of Paragraph 49, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

51. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

52. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

53. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

55. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

56. This CAFO shall be binding upon the Respondent, its successors, and assigns.

57. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

58. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VI. Effective Date

59. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Peco Foods, Inc.:

By: Mark Hickman Date: 7/2/13
Name: MARK HICKMAN (Typed or Printed)
Title: CEO / PRESIDENT (Typed or Printed)

U.S. Environmental Protection Agency:

By: Beverly H. Banister Date: 7-11-13
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this 16 day of July, 2013.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing

Consent Agreement and Final Order, In the Matter of Peco Foods, Inc., Docket Number:

EPCRA-04-2013-2023(b), on the parties listed below in the manner indicated:


Caron Falconer (Via EPA Internal Mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Lynda Crum (Via EPA Internal Mail)
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA Internal Mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

John Brunini (Via Certified Mail – Return Receipt Requested)
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, MS 39201

Date: 7-16-13


Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection
Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511